

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

J.D., on behalf of herself and others similarly
situated, *et al.*,)
Plaintiffs,)
v.) No. 17-cv-02122-TSC
ALEX M. AZAR II, *et al.*,)
Defendants.)

MOTION FOR A PRELIMINARY INJUNCTION

Pursuant to Federal Rule of Civil Procedure 65 and Local Rule 65.1, Plaintiffs apply for the issuance of an order preliminarily enjoining Defendants (along with their respective successors in office, officers, agents, servants, employees, attorneys and anyone acting in concert with them) from forcing any class member to reveal the fact of their pregnancy and their abortion decision to anyone, and from revealing that information to anyone themselves, either before or after an abortion, unless the class member provides non-coerced consent to such disclosure or needs emergency medical care and is incapacitated such that she is unable to inform a medical care provider herself.

On June 14, 2019, the Court of Appeals affirmed this Court’s March 30, 2018 Order that granted class certification of all pregnant unaccompanied immigrant minors, and the preliminary injunction enjoining Defendants from interfering with or obstructing any class member’s access to pregnancy and abortion-related care, including non-directive options counseling and abortion.

J.D. v. Azar, 925 F.3d 1291, 1339–40 (D.C. Cir. 2019). The Court of Appeals, however, remanded the case to this Court for additional factual findings and conclusions of law regarding the forced disclosure aspect of Defendants’ policy. *Id.*

On August 6, 2019 the Court of Appeals mandate issued. Accordingly, Plaintiffs respectfully request that this Court enter a new preliminary injunction on the forced disclosure aspect of Defendants' policy, with the findings of facts and conclusions of law required by the Court of Appeals. The grounds for this motion are that Defendants' policy of forced disclosure violates the Plaintiff class members' rights under the Fifth Amendments to the Constitution of the United States; that the Plaintiff class members will suffer irreparable injury if the Defendants are not enjoined from enforcing their forced disclosure policy; that Defendants will not be injured if an injunction issues; and that the public interest favors the issuance of an injunction.

This motion is based on the memorandum of points and authorities submitted herewith, all declarations, pleadings and filings filed in this action, and such oral arguments and evidence as may be presented at a hearing on the motion.

August 8, 2019

Respectfully submitted,

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**PLAINTIFFS' MEMORANDUM IN SUPPORT OF THEIR MOTION FOR A
PRELIMINARY INJUNCTION**

PRELIMINARY STATEMENT

On June 14, 2019, the Court of Appeals affirmed this Court's certification of a class of all pregnant unaccompanied minors in Defendants' custody, and affirmed the portion of this Court's preliminary injunction that prohibits Defendants from obstructing or interfering with class members' access to abortion. *J.D. v. Azar*, 925 F.3d 1291, 1339–40 (D.C. Cir. 2019). The Court of Appeals, however, vacated the portion of this Court's preliminary injunction that prohibited Defendants from revealing a minor's abortion decision or pregnancy to anyone (or coercing the minor into doing so) absent her consent, and remanded to this Court to make further findings of fact and conclusions of law as to this aspect of Defendants' policy to better enable appellate review. *Id.*

The Court of Appeals mandate issued on August 6, 2019, and this Court's preliminary injunction as to the forced disclosure aspect of Defendants' policy is now vacated. Absent immediate action by this Court, Defendants are now free to mandate that unaccompanied immigrant minors' pregnancies and abortion decisions be disclosed to others, including abusive

parents or potential sponsors. Since this Court’s March 30, 2018 preliminary injunction, Plaintiffs’ counsel have assisted a steady stream of class members who have requested access to abortion, abortion information, or access to the courts to seek a judicial bypass of a parental involvement law, and are in fact currently assisting a class member who is seeking access to abortion as of the date of this submission. *See* Decl. of Lindsey Kaley (hereinafter, “Kaley Decl.”) ¶ 5, attached hereto as Exhibit 1. Indeed, Defendants’ own documents show that since this Court’s injunction issued, *at least* 53 minors have requested access to abortion while in ORR custody, 22 of whom made their requests within just the first six months of 2019. *See* Exhibit A to Kaley Decl., HHS Spreadsheets. Many of these young women informed Plaintiffs’ counsel that they do not want to inform their parents or prospective sponsors of their pregnancy and/or abortion decision. Kaley Decl. ¶ 6.

Given the frequency of class members coming to Plaintiffs’ counsel’s attention, it is only a matter of time—and not much time—before a class member will be subjected to Defendants’ forced disclosure policy, which will violate their constitutional rights and expose them to further, serious harms. Indeed, the former ORR Deputy Director admitted that Defendants’ policy of mandatory notification could cause minors harm. Moreover, every major medical organization agrees that minors should not be compelled to tell their parents of their abortion decision. Accordingly, to prevent irreparable harm to Plaintiff class members, Plaintiffs respectfully request that this Court make the further findings of fact and conclusions of law requested by the D.C. Circuit and issue a new preliminary injunction precluding Defendants from mandating that minors’ pregnancies and/or abortion decisions be disclosed to parents and potential sponsors absent the minor’s uncoerced consent.

FACTS

I. DEFENDANTS' FORCED DISCLOSURE POLICY.

Mandatory Disclosure to Parents

Around March 2017, ORR adopted a policy of coercing all unaccompanied immigrant minors into telling their parents and/or immigration sponsors of their pregnancies and abortion decisions, and if they refused, of informing them directly, even in cases where ORR was aware that doing so could harm the minor and/or her family members.¹ As set forth in detail below, the record is replete with evidence of this forced disclosure aspect of Defendants' anti-abortion policy and its deleterious effect on Plaintiff class members.

1. Defendants admit that they have a policy of mandating that pregnant unaccompanied immigrant minors in their custody disclose (or have Defendants disclose) their pregnancies and/or abortion decisions to their parents. For example, in a declaration dated April 3, 2018, Jallyn Sualog, then-Acting Deputy Director for Children's Programs at ORR, said:
 - a. "Since March 2017, ORR has implemented [a] policy by requiring grantees to ensure parental notification for UACs that are pregnant and request abortion when such notification would not endanger the UAC's health and well-being." Decl. of Jallyn Sualog (hereinafter, "Sualog Decl.") ¶ 11, ECF No. 128-1.

¹ Around the same time, Defendants also adopted a policy of requiring that all pregnant minors who requested an abortion receive "life-affirming" counseling from an anti-abortion crisis pregnancy center. *See Pls.' Third Amended Compl.* ¶¶ 3, 66, 72–75, 90, 93–95, ECF No. 143. Although that aspect of Defendants' policy involves coerced disclosure of class members' pregnancies and abortion decisions, Plaintiffs do not discuss that aspect of Defendants' policy here, given that it is enjoined by this Court's March 30, 2018 order, which prohibits Defendants from, *inter alia*, "interfering with or obstructing" any class member's access to "non-directive options counseling, [] abortion counsel, [and] an abortion." *See Order at 1*, ECF No. 127.

b. Moreover, regardless of whether a minor has expressed an interest in seeking abortion, ORR “may [] inform[] the UAC’s parents of her pregnancy, her options concerning the pregnancy, and her expressed wishes concerning the pregnancy. Currently, ORR will disclose a UAC’s health status or other specific information to a UAC’s parent without the UAC’s consent if doing so is consistent with state law, and would not endanger the UAC’s health and well-being.” *Id.* ¶¶ 8–9.

2. Directives sent from then-ORR Director Scott Lloyd to his staff and ORR-funded shelters confirm that ORR’s policy requires forced disclosure to parents, and contrary to Ms. Sualog’s declaration, it applies regardless of whether harm to the minor’s health or well-being would result. For example:

a. In an email from then-Deputy Director of ORR Jonathan White to an ORR Federal Field Specialist, Commander White says that Lloyd instructed that shelters are “not to take [a minor] to get a termination, or to any appointments to prepare her for a termination, without consent from the Director, *which cannot happen without written and notarized consent of her parents . . .*” Ex. B, Decl. of B. Amiri in Supp. of Pls.’ Renewed Mot. for Class Cert. & Prelim. Inj. (“Amiri Decl.”), ECF No. 121-3, PRICE_PROD_00014889 (emphasis added).

b. In another email, Lloyd instructed ORR staff that when minors receive positive pregnancy tests “the parents must be notified.” Ex. G, Amiri Decl., ECF No. 122-5, PRICE_PROD_00014816.

c. In yet another email, Lloyd instructed Commander White that shelters should “notify [parents of the minor’s pregnancy] regardless of UAC’s wishes.” Ex. F, Amiri Decl., ECF No. 122-4, PRICE_PROD_00014822.

3. The evidence shows how this policy was enforced. For example:

a. In March of 2017, then-Director Lloyd instructed that a minor who was residing in a shelter in Arizona be taken to a crisis pregnancy center (CPC) and that—after that visit—“if [the minor] still desires the abortion, and it is still within the window for a legal abortion, she must obtain parental consent, which will necessitate options counseling with them, plus signed, notarized declaration of consent.” Ex. G, Decl. of B. Amiri in Supp. of Pls.’ App. for TRO & Mot. for Prelim. Inj. (“TRO Amiri Decl.”), ECF No. 1-21, PRICE_PROD_00010710.

b. Also in March of 2017, then-Director Scott Lloyd instructed that the parents of yet another minor who was residing at another shelter in Arizona be notified of her abortion decision, “despite the [minor’s] affirmative declaration to keep said personal health information confidential.” Ex. I, TRO Amiri Decl., ECF No. 1-23, PRICE_PROD_00010623 (shelter staff confirming instructions from ORR that the minor’s mother and sponsor be notified of her abortion decision); *see also* Ex. H, TRO Amiri Decl., ECF No. 1-22, PRICE_PROD_00010867 (Lloyd instructing that the minor’s parents must be notified of her abortion). The shelter responded to that directive by informing both the minor’s mother and her sponsor (an older brother) about the minor’s abortion. Ex. H, TRO Amiri Decl., ECF No. 1-22, PRICE_PROD_00010866. Defendants required parental notification of this minor’s abortion decision even after she obtained a judicial bypass to consent to the abortion on her own, and despite the fact that an immigrants’ services organization told Defendants that if they told the parents in the home country her father would abuse her mother. *See* Ex. D, Amiri Decl., ECF No. 121-5, Dep. Tr. of Jonathan White 83:5 – 84:17; Ex. I, Decl. of B. Amiri in Supp. of Pls.’ Reply in Further Supp. of Class Cert., ECF No. 56-10, Young Center Best Interests Recommendation, PRICE_PROD_00012935-37.

c. In August 2017, a minor who was pregnant and had requested an abortion while residing at a shelter in Arizona was taken to a CPC, given spiritual counseling, and ended up participating in a “family session” in which her mother was informed of her pregnancy and desire for abortion, in spite of the minor’s expressed desire that her family not be informed because they “would not want her anymore” and scold her. Ex. A, Amiri Decl., ECF No. 122-2, PRICE_PROD_00014828-29.

d. In September 2017, Jane Doe, the first named plaintiff in this case, was required to tell her parents about her pregnancy and abortion decision, and when she refused, ORR instructed the shelter to do so, *see* Decl. of Jane Doe ¶ 15, ECF No. 3-3, despite the fact that Jane Doe: (1) was “strongly opposed to parental notification,” Ex. C, Amiri Decl., ECF No. 121-4, PRICE_PROD_00015152-53; Ex. B, Amiri Decl., ECF No. 121-3, PRICE_PROD_00014890 (“minor does not agree to parental consent”); (2) was seeking to obtain (and did obtain) a court order permitting her to bypass Texas’s parental involvement requirement, Decl. of Marie Christine Cortez (hereinafter, “Cortez Decl.”) ¶ 3, ECF No. 41-1, and (3) had been abused by her parents in the past, *id.* ¶¶ 8–11. Then-Deputy Director White declared that the notification of Ms. Doe’s mother about her pregnancy was done “[a]t ORR’s direction and consistent with ORR policies and procedures.” Decl. of Jonathan White ¶ 9, ECF No. 10-1.

e. Also around September 2017, another minor was pregnant and contemplating an abortion, and then-Director Lloyd instructed shelter staff to notify her parents of her pregnancy and the fact that she was considering abortion, “regardless of the [minor’s] wishes,” even though she had previously expressed she did not want to talk to her family and did not give consent for shelter staff to talk to them either. Ex. E, Amiri Decl., ECF No. 122-3,

PRICE_PROD_00014814; Ex. F, Amiri Decl., ECF No. 122-4, PRICE_PROD_00014822-24; Ex. P, Amiri Decl., ECF No. 122-7, PRICE_PROD_00014975.

f. In October 2017, yet another minor who was pregnant and requesting an abortion was coerced into notifying her mother at Lloyd's direction. Ex. G, Amiri Decl., ECF No. 122-5, PRICE_PROD_00014815-16; Ex. H, Amiri Decl., ECF No. 122-6, PRICE_PROD_00015133-34. Upon confirmation of the minor's pregnancy, then-Director Lloyd instructed shelter staff that the minor's parents "must be notified of [her] pregnancy," leaving to the minor only the decision as to whether she would do the notifying herself or the shelter staff would do it for her. *See* Ex. G, Amiri Decl., ECF No. 122-5, PRICE_PROD_00014815-16. After shelter staff reported that the minor did not want to notify her mother, Director Lloyd again instructed that the shelter "[r]equest permission to from the [minor] for the program to inform her parents of her request for an abortion," making clear that "[i]f she does not consent, the [shelter] will have to proceed anyway" and instructing the shelter to "please inform her of this if she does not consent at first." Ex. H, Amiri Decl., ECF No. 122-6, PRICE_PROD_00015133-34.

g. In December 2017, Defendants imposed their policy on two of the other named plaintiffs in this case. In Ms. Poe's case, then-Director Lloyd required Ms. Poe to either notify her parents of her pregnancy and her request for an abortion herself or have them be notified. Ex. I, Amiri Decl., ECF No. 121-10, PRICE_PROD_00015509. During the required notification session, Ms. Poe's family threatened to harm her if she had the abortion, causing her to temporarily withdraw her request to obtain an abortion because—as she later stated when reasserting her request—of the pressure from her mother and potential sponsor to continue the pregnancy. Ex. J, Amiri Decl., ECF No. 121-11, PRICE_PROD_00015515; ECF No. 92-1,

Redacted ORR Decision Document at 2 (“the minor disclosed that she was being threatened by her biological [mother] and potential sponsor to keep the baby or they would inflict physical harm on her. . . . [the minor] stated that she felt pressured by her mother and potential sponsor to continue the pregnancy, but she wants to terminate the pregnancy.”); *id.* at 5; ECF No. 129-1, Dep. Tr. of Scott Lloyd, 229:24 – 230:4. This temporary withdrawal of her request for an abortion occurred despite the fact that Ms. Poe had disclosed to clinicians that she preferred to harm herself rather than continue with the pregnancy. ECF No. 92-1, Redacted ORR Decision Document at 2; *id.* at 5 (“She still desires an abortion, and has on at least one occasion threatened to harm herself if she does not obtain it.”); Ex. I, Amiri Decl., ECF No. 121-10, PRICE_PROD_00015506. Ms. Poe eventually renewed her abortion request. ECF No. 92-1, Redacted ORR Decision Document at 2; Decl. of Jonathan White ¶ 5, ECF No. 66-1; Ex. J, Amiri Decl., ECF No. 121-11, PRICE_PROD_00015515.

h. Defendants also required Ms. Roe or her shelter to notify Ms. Roe’s family member who raised her in her home country of her pregnancy and abortion decision. Ex. M, Amiri Decl., ECF No. 121-14, PRICE_PROD_00015591-94; *see also* Dep. Tr. of Jonathan White, 132:14 – 133:17, ECF. No 129-2; Dep. Tr. of Scott Lloyd, 239:21 – 240:5, ECF No. 129-1.

4. Defendants enforced this mandatory disclosure policy even while admitting that informing a minor’s parents of her pregnancy and abortion decision without her consent can cause harm. For example, then-Deputy Director of ORR White testified that, based on his social work background and training, he would “not recommend” notifying a minor’s parents of her abortion decision over the minor’s objection “[b]ecause of the potential of additional harm or risk.” Ex. D, Amiri Decl., ECF No. 121-5, Dep. Tr. of Jonathan White, 41:11 – 43:1.

Mandatory Disclosure to Potential Sponsors

The evidence also shows that Defendants' policy requires that minors' prospective sponsors be notified of their pregnancies and/or abortion decisions. These sponsors are generally "qualified parents, guardians, relatives, or other adults" with whom the minor has a close relationship,² who already reside in the United States and who assume physical custody of the minor and become responsible for caring for the minor while he/she awaits his/her immigration hearing, thereby often acting as a de facto parent or legal guardian.³ For example:

1. In March of 2017, ORR requested confirmation that the prospective sponsor of a minor residing in a shelter in Phoenix who had requested an abortion be notified of her pregnancy. Ex. C, TRO Amiri Decl., ECF No. 1-17, PRICE_PROD_00010706.
2. Also in March of 2017, ORR directed that the prospective sponsor of a minor discussed above who was residing in a shelter in Arizona and who had obtained an abortion be notified of her abortion decision, over the minor's objection. Ex. I, TRO Amiri Decl., Doc. 1-23, PRICE_PROD_00010623 ("If the UC desires to proceed with statement placement, the UC will be advised that the UC Sponsor, the UC's biological brother, will also be advised that; UC was impregnated in COO and further that the UC terminated said pregnancy in the United States while in ORR Care, *despite the UC's affirmative declaration to keep said personal health information confidential.*"); Ex. H, TRO Amiri Decl., ECF No. 1-22, PRICE_PROD_00010867 (confirming shelter has "informed the UC mother and sponsor about the procedure which

² See ORR, Sponsors and Placement, <https://www.acf.hhs.gov/orr/about/ucs/sponsors>; see also Kaley Decl. ¶ 6.

³ See ACF Fact Sheet, Unaccompanied Alien Children Program, December 2018, https://www.acf.hhs.gov/sites/default/files/orr/unaccompanied_alien_children_program_fact_sheet_december_2018.pdf; see also Kaley Decl. ¶ 6.

terminated [her] pregnancy"). ORR compelled this disclosure despite concerns that the minor's sponsor (her brother) would share the information with their parents, which would result in their father retaliating against their mother. ECF No. 56-10, Young Center Best Interests Recommendation, PRICE_PROD_00012935-37.

3. In December 2017, Defendants required Ms. Poe to notify her potential sponsor of her pregnancy and desire to obtain an abortion. *See Ex. H, Amiri Decl.*, ECF No. 121-11, PRICE_PROD_00015514-15. As explained above, during the required notification session, Ms. Poe's sponsor threatened to harm her if she had the abortion, causing her to temporarily withdraw her request to obtain an abortion, even though she disclosed that she would prefer to harm herself rather than continue with the pregnancy. *See supra* 7–8. Ms. Poe's sponsor's threats of violence in reaction to the forced disclosure of her desired abortion likely prevented Ms. Poe's release from ORR custody to a sponsor, despite the existence of that sponsor.

II. THE EFFECT OF FORCED DISCLOSURE ON MINORS.

While the majority of minors who are pregnant and facing the decision whether to obtain an abortion in the United States involve at least one parent in their decision, research has consistently shown that minors who do not involve their parents have compelling reasons to avoid disclosure. *See Decl. of J. Shoshanna Ehrlich (hereinafter, "Ehrlich Decl.") ¶¶ 14–15, attached hereto as Exhibit 2.* As detailed below, and in the accompanying declarations, Defendants' policy of disregarding these compelling reasons, and mandating that minors' parents and/or potential sponsors be notified of minors' pregnancies and abortion requests over their objections, risks subjecting these young women to serious physical, emotional and psychological harms.

For example, some minors have been subjected to harsh treatment at the hands of one or both parents, and fear that disclosure of their abortion decision would result in further physical or emotional abuse or being thrown out of their homes. Ehrlich Decl. ¶¶ 16–18, 24–26, 28 (citing study finding that 30% of minors who did not tell their parents about their abortion decision had already experienced violence in their family, feared that violence would occur, or were afraid of being forced to leave home); Decl. of Rebecca Garcia Rangel (hereinafter, “Rangel Decl.”) ¶¶ 10, 12–13, attached hereto as Exhibit 3. Indeed, many unaccompanied immigrant minors have fled to the United States because they have suffered abuse, abandonment, and/or neglect at the hands of their parents in their countries of origin already. *See* Rangel Decl. ¶¶ 3, 9–10; *see also* Ehrlich Decl. ¶ 35. That unaccompanied immigrant minors may be physically separated from their parents and/or potential sponsors when the disclosure is made does not ameliorate their concerns. *See* Ehrlich Decl. ¶ 35; Rangel Decl. ¶¶ 10, 12. If these young women are ultimately sent back to their home countries and/or released to their sponsors, they may well be at risk of physical or emotional abuse or rejection. *Id.* Moreover, like U.S. minors who express concern about being thrown out of the house, unaccompanied immigrant minors may reasonably fear that disclosure of their pregnancy and/or abortion decision to their prospective sponsor will jeopardize their release, as the sponsor may withdraw his or her sponsorship and refuse to assume care of the minor due to, among other things, a religious or cultural objection to pregnancy outside of marriage and/or abortion. *See* Ehrlich Decl. ¶ 35; Rangel Decl. ¶¶ 10, 13; Kaley Decl. ¶ 6.

Other minors do not disclose out of fear that doing so will incite parental or familial disapproval, disappointment, or rejection, and irreparably damage their familial relationships. Ehrlich Decl. ¶¶ 19, 35; Rangel Decl. ¶¶ 9–10, 12–13. Such concerns are likely to be heightened in the unaccompanied immigrant minor context, given that the engrained gender inequities,

increased violence against women and girls, high religiosity, and illegality of abortion in these minors' countries of origin tends to create a culture of conservatism and taboo around pre-marital sex and abortion. Rangel Decl. ¶¶ 6–7, 9; *see also id.* ¶ 5 (detailing one minor's fear regarding what her close indigenous Guatemalan community would think about her if she was forced to disclose her pregnancy and planned abortion and how that fear became an obstacle to the abortion she would otherwise choose); Cortez Decl. ¶¶ 8–11; Ehrlich Decl. ¶¶ 19, 27 (noting that such fears may be rooted in history of parents making negative remarks about sex). In cultural contexts such as these, where abortion is viewed with particular disapproval, its disclosure can further strain and fracture family relationships and risk leaving young women isolated and alone, with limited or no familial or community support. Rangel Decl. ¶¶ 9, 13.

Still other minors worry that the stress of disclosure would be too much for their parents to handle, given their knowledge of the existing financial, physical, social or psychological burdens their parents are carrying, and thus choose not to disclose their situation to their parents in order to protect them from this undue stress. *See, e.g.*, Ehrlich Decl. ¶¶ 20, 27, 29, 36. These fears also have particular salience for unaccompanied minors, whose parents often face extraordinarily difficult situations in home countries ravaged by violence and poverty. *See generally* Ehrlich Decl. ¶ 36; Rangel Decl. ¶¶ 3, 6.

On top of all this, many unaccompanied immigrant minors who arrive at the border discover they are pregnant after having been raped or sexually assaulted in either their home countries or in transit to the United States. *See* Rangel Decl. ¶¶ 7–8. These young women may be afraid or unready to reveal the rape or sexual assault that resulted in their pregnancies to their families. *Id.* ¶ 7. Coercing them into reliving an extremely traumatic experience by making a

painful disclosure over a phone call before they are emotionally ready to do so, and without consideration of the possible consequences, only risks further traumatizing them. *Id.* ¶ 9.

Regardless of their specific reasons for doing so, minors do not make the decision not to involve a parent in their abortion decision lightly. Ehrlich Decl. ¶ 22. To the contrary, minors' concerns about disclosure tend to be well thought out, and deeply rooted in their intimate knowledge of their individualized family history and the complex realities of their lives, including their experience with long-standing patterns of parental mistreatment and parental behaviors. *Id.* ¶¶ 21–22. Drawing on their unique lived experience, minors are extremely well-positioned to make assessments as to who in their lives will react negatively to their disclosure, and who will provide support and assistance in the decision making process; this is reflected in the fact that many minors considering abortion often choose to confide in and discuss their abortion decision with another trusted adult, often an older sibling, attorney, or social worker. Rangel Decl. ¶ 14; Kaley Decl. ¶ 7. Indeed, as the Committee on Adolescence of the American Academy of Pediatrics has concluded, “[a]dolescents who are strongly opposed to informing parents about their intent to have an abortion tend to predict family reactions accurately.” Ehrlich Decl. ¶ 23 (quoting the Committee). It is therefore critically important that their individual assessments regarding the potential risks of parental disclosure be listened to and respected. *Id.* ¶ 23.

For these reasons, and out of recognition of the harms that can arise from forced notification, major medical professional organizations, including the American Academy of Pediatrics, the American Medical Association, and the American Public Health Association, have uniformly concluded that a minor should not be compelled or required to involve her parents in her decision to obtain an abortion. See Ehrlich Decl. ¶¶ 13, 30–33. For example, in

their policy statement on the issue, the Committee on Adolescence of the American Academy of Pediatrics (AAP) recognizes that “[i]nvoluntary parental notification can precipitate a family crisis,” and that in addition to being met by violence, disclosure may irreparably damage the parent-child bond, including actual rejection.⁴ *Id.* ¶ 31 (quoting AAP). Accordingly, the AAP has concluded that “mandating parental involvement does not achieve the intended benefit of promoting family communication but does increase the risk of harm to the adolescent by delaying access to appropriate medical care or increasing the rate of unwanted births.”⁵ *Id.*

Likewise, the American Medical Association’s (AMA) Medical Ethics Opinions on the provision of health care for minors also make clear that when minors request that their abortion decisions be kept confidential, physicians should “[n]ot feel or be compelled to require a minor patient to involve her parents before she decides whether to undergo an abortion.”⁶ *Id.* ¶ 32 (quoting AMA). As the AMA explains, “[t]he patient, even an adolescent, generally must decide whether, on balance, parental involvement is advisable. Accordingly, minors should ultimately be allowed to decide whether parental involvement is appropriate.”⁷ *Id.*

⁴ Committee on Adolescence, American Academy of Pediatrics, *The Adolescent’s Right to Confidential Care When Considering Abortion*, <https://pediatrics.aappublications.org/content/139/2/e20163861> (2017).

⁵ *Id.*

⁶ See AMA, Code of Medical Ethics Opinion 2.2.3, Mandatory Parental Consent to Abortion, <https://www.ama-assn.org/delivering-care/ethics/mandatory-parental-consent-abortion>; see also AMA, Code of Medical Ethics Opinion 2.2.2, Confidential Health Care for Minors, <https://www.ama-assn.org/delivering-care/ethics/confidential-health-care-minors>.

⁷ See AMA Council on Ethical and Judicial Affairs, AMA Code of Medical Ethics Opinions on Confidential Care for Sexually Active Minors and Physicians’ Exercise of Conscience in Refusal of Services, Opinion 2.015 – Mandatory Parental Consent to Abortion, <https://journalofethics.ama-assn.org/article/ama-code-medical-ethics-opinions-confidential-care-sexually-active-minors-and-physicians-exercise/2012-02>.

Similarly, the American Public Health Association (APHA) has explained in its policy statements that “[p]arental involvement [requirements] do not promote family communication as intended, and can elevate pregnant minors’ risks by delaying access to care,” and create “[o]ther negative consequences” including, among other things, “parentally coerced termination of pregnancy, physical violence between the parents or against the pregnant minor, the pregnant minor being forced to leave the home, damage to the parents’ health, the pregnant minor being delayed in informing her parents, negative experiences when informing parents, the potential to aggravate family conflicts, and pregnant minors from dysfunctional and nonsupportive families carrying unwanted pregnancies to term without receiving adequate prenatal care.”⁸ *Id.* ¶ 33 (quoting APHA). Accordingly, the APHA urges that “minors’ access to abortion services not be made conditional on parental involvement.”⁹ *Id.*

In sum, as the major medical organizations and experts in the field attest, minors themselves tend to be the best situated to assess the likely outcome of disclosure based on the complex realities of their own lives, and forced disclosure to a parent or prospective sponsor irrespective of a minor’s fears risks unnecessarily exposing a minor to emotional, psychological, and physical harms. *See generally* Ehrlich Decl.; Rangel Decl.

ARGUMENT

To obtain a preliminary injunction, a plaintiff must establish (1) “that [s]he is likely to succeed on the merits,” (2) “that [s]he is likely to suffer irreparable harm in the absence of

⁸ See APHA, *Policy No. 20115, Ensuring Minors’ Access to Confidential Abortion Services*, (Nov. 1, 2011), <https://www.apha.org/policies-and-advocacy/public-health-policy-statements/policy-database/2014/07/03/11/14/ensuring-minors-access-to-confidential-abortion-services>.

⁹ *Id.*

preliminary relief,” (3) “that the balance of equities tips in [her] favor,” and (4) “that an injunction is in the public interest.” *Winter v. Nat’l Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). Courts in this Circuit have traditionally applied these factors on a “sliding scale,” where a stronger showing on some factors can compensate for a weaker showing on others. *See, e.g., Davenport v. Int’l Brotherhood of Teamsters*, 166 F.3d 356, 360–61 (D.C. Cir. 1999). It has been suggested, but not decided, that a likelihood of success on the merits may be required. *See Sherley v. Sebelius*, 644 F.3d 388, 392–93 (D.C. Cir. 2011) (citing *Winter*, 555 U.S. at 20–22).

Under either approach, Plaintiffs make the necessary showing here.

I. PLAINTIFFS ARE LIKELY TO SUCCEED ON THE MERITS OF THEIR CLAIMS.

A. Defendants’ Requirement of Parental and Sponsor Notification Violates the Fifth Amendment.

The Supreme Court has made clear that, although a state can require parental involvement for minors seeking abortions, such a requirement must also have an avenue for minors to “bypass” parental involvement. *Bellotti v. Baird*, 443 U.S. 622, 647 (1979) (“We conclude, therefore, that . . . every minor must have the opportunity—if she so desires—to go directly to court [to obtain access to an abortion] without first consulting or notifying her parents”). As the Fifth Circuit has held, if *Bellotti* means anything, “it surely means that States seeking to regulate minors’ access to abortion must offer a credible bypass procedure, *independent of parents or legal guardians.*” *Causeway Med. Suite v. Ieyoub*, 109 F.3d 1096, 1112 (5th Cir. 1997) (striking down statute that required judicial bypass court to notify the minor’s parents under certain circumstances), *overruled on other grounds by Okpalobi v. Foster*, 244 F.3d 405 (5th Cir. 2001).

Nevertheless, Defendants have argued in this case that they are entitled to notify (or require minors to notify) parents and prospective sponsors of the minors' abortion decisions in every circumstance, without any mechanism for those minors who object to "bypass" such notification, and even in cases where a minor has already obtained or will seek to obtain a court order waiving a state parental involvement requirement. *See, e.g.*, Defs.' Opp. to Pls.' Renewed Motion for Class Cert & PI at 10-13, ECF No. 124; *supra* 5–6 (examples of Defendants mandating that parents be notified even when minors were seeking or had already obtained a judicial bypass order). Neither the Supreme Court nor any lower court has upheld a parental notification requirement for all minors that lacked a bypass. *See, e.g.*, *Lambert v. Wicklund*, 520 U.S. 292 (1997) (upholding parental notification law because it had a bypass); *Planned Parenthood, Sioux Falls Clinic v. Miller*, 63 F.3d 1452, 1460 (8th Cir. 1995) (holding that a state "may not impose a parental-notice requirement without also providing a confidential, expeditious mechanism by which mature and 'best interest' minors can avoid it"); *Ind. Planned Parenthood Affiliates Ass'n v. Pearson*, 716 F.2d 1127, 1140–41 (7th Cir. 1983) (striking down state law requiring parents to be notified of a minor's petition for a bypass even after the bypass petition is denied); *Planned Parenthood v. Wasden*, 376 F. Supp. 2d 1012, 1019–1020 (D. Idaho 2005) (preliminarily enjoining law that allowed for notice to a parent after a minor obtained an emergency abortion, noting that "when the minor is mature enough to make her own decisions independent of her parents, the State has no more interest in notifying her parents than it would in notifying the parents of an adult woman — namely, none.") (citing *Miller*, 63 F.3d at 1460); *Planned Parenthood of Ind. and Ky., Inc. v. Comm'r, Ind. State Dep't of Health*, 258 F. Supp. 3d 929, 946 (S.D. Ind. 2017) (striking down parental notification requirement that required post-bypass parental notice for some minors), *appeal argued*, No. 17-2428 (7th Cir. Jan. 5, 2018).

As noted above, *supra* 9, sponsors to whom class members may be released often act as de facto parents or guardians. Accordingly, the same concerns identified by the courts in considering forced parental consent or notice requirements without an adequate bypass, including, for example, the risk of minors incurring “disappointment and disapproval, withdrawal of financial support,” or “domestic abuse at the hands” of their custodian, *Comm’r, Ind. State Dep’t of Health*, 258 F. Supp. 3d at 946–47 (S.D. Ind. 2017), are also implicated in the context of forced sponsor notification. *See, e.g.*, Rangel Decl. ¶¶ 8, 10, 12, 14.

The harm of forced parental or familial involvement in a minor’s abortion decision is not limited to the possibility that a custodian might physically block the minor’s abortion access. Rather, as detailed above, forced disclosure can trigger harm to the minor or other family members, in the form of physical or emotional abuse, rejection or ostracization, or destruction of familial relationships, and can also create a chilling effect on the minor’s decision. *See supra* 10–15; *see generally* Rangel Decl.; Ehrlich Decl. For these reasons, courts have invalidated statutes that require notification even *after* a minor’s request for a judicial bypass has been denied on the basis that such notification (and the possibility of such notification) could cause “additional trauma” and have a “chilling effect” on minors’ attempting to effectuate their abortion decisions in the first place. *See Pearson*, 716 F.2d at 1141 (“[i]t is hardly speculative to imagine that even some mature minors will be deterred from going to court if they know that their parents will be notified if their petitions are denied...[n]otification will inevitably result from denial of the petition because pregnancy cannot be hidden forever, but the state’s form of notification is likely to cause additional trauma to the minor and is unlikely to encourage family harmony”); *see also Comm’r, Ind. State Dep’t of Health*, 258 F. Supp. 3d at 946–47 (finding, *inter alia*, that parental notification can lead to “parental disappointment and disapproval,

withdrawal of financial support,” and “abuse [that] can take several forms – physical, sexual, or emotional,” and that even fear of abuse that can lead to suicidal thoughts or self-abortion, or deterrence from seeking abortion altogether); *Wasden*, 376 F. Supp. 2d at 1019–1020 (enjoining law that allowed for post-abortion notice on the basis that failure to provide an exemption from such notice would “operate as a substantial obstacle to their choice to undergo an abortion” because it would have a “substantial pre-abortion chilling effect.”).

Defendants do not even attempt to contest the fact that forced notification puts minors at risk of harm. *Supra* 8; Ex. D, Amiri Decl., ECF No. 121-5, Dep. Tr. of Jonathan White, 41:11 – 43:1. Nor could they, as these harms are evidenced by the facts in this very case. For example, when Jane Poe was forced to tell her parents and sponsor that she wanted an abortion, they threatened to harm her. *See supra* 7–8. This threat may turn into actual abuse if she sees her parents or her potential sponsor (a relative) again, and, in the short term, led Ms. Poe briefly to change her mind about the abortion, despite the fact that she had expressed a desire to self-harm if forced to carry her pregnancy to term. *Id.*

Moreover, Defendants’ claim that they do not notify a parent or sponsor of a minor’s pregnancy or abortion decision if it would cause a risk of harm to the minor, *see* Sualog Decl. ¶¶ 9–10, is belied by the evidence showing how Defendants’ implemented their policy. As discussed above, Defendants contacted Jane Doe’s mother in her home country about her pregnancy, over her objections, despite the fact that Ms. Doe suffered abuse at the hands of her parents, and even though she was seeking to obtain (and obtained) a court order permitting her to bypass Texas’s parental involvement requirement. *See supra* 6. Ms. Poe’s situation also makes clear that the government’s policy contains no exception for when disclosure would endanger the minor. *See supra* 7–8. And in one of the cases out of Arizona, Defendants required parental

notification after the minor had already obtained a judicial bypass to consent to the abortion on her own, and over the minor’s advocate’s concern that it could lead to violence by the minor’s father against her mother. *See supra* 5. In sum, there is absolutely no evidence that Defendants have ever exempted a minor from their forced notification policy out of fear that notification would lead to threats of abuse or other harms to her. Accordingly, Plaintiffs are likely to succeed on the merits of their Fifth Amendment claim.

B. Defendants’ Forced Disclosure Policy Violates Plaintiffs’ Right to Informational Privacy.

In addition, Defendants’ forced disclosure policy violates Plaintiffs’ right to informational privacy by requiring that parents and potential sponsors be informed about minors’ pregnancy and/or abortion decisions. *See* Pls.’ Third Amended Compl. ¶ 94, ECF No. 143. As the Supreme Court has made clear, people have a right to privacy “in avoiding disclosure of personal matters,” *Whalen v. Roe*, 429 U.S. 589, 599 (1977), and the government violates that right when it discloses a person’s deeply private information to others, *see, e.g., Doe v. City of New York*, 15 F.3d 264 (2d Cir. 1994). Accordingly, numerous courts have recognized constitutional claims in cases where an individual’s private, sensitive personal information—including their HIV status, sexual orientation, gender identity, or details about their sexual assault—was disclosed, or threatened to be disclosed, without their consent. *See, e.g., Doe*, 15 F.3d at 267 (recognizing constitutional claim based on government disclosure of employees’ HIV status, and noting that “[e]xtension of the right to confidentiality to personal medical information recognizes there are few matters that are quite so personal as the status of one’s health, and few matters the dissemination of which one would prefer to maintain greater control over”); *A.L.A. v. West Valley City*, 26 F.3d 989 (10th Cir. 1994) (same, for arrestee’s HIV status); *Sterling v. Borough of Minersville*, 232 F.3d 190, 197–98 (3rd Cir. 2000) (finding

officer's threat to disclose arrestee's suspected homosexuality to arrestee's grandfather violated arrestee's constitutional right to privacy, and stating that "[i]t is difficult to imagine a more private matter than one's sexuality"); *Powell v. Schriver*, 175 F.3d 107, 111–12 (2d Cir. 1999) (recognizing constitutional right to privacy regarding an individual's identification as transgender, noting that an individual would rightly "desire to preserve one's [] confidentiality" as to their gender identity, and that revelation could incite "hostility and intolerance from others"); *Bloch v. Ribar*, 156 F.3d 673, 685–86 (6th Cir. 1998) (recognizing a rape victim's fundamental right of privacy in preventing government officials from unnecessarily releasing details of her rape and noting that "revealing information regarding [our sexuality and choices related to it] exposes an aspect of our lives that we regard as highly personal and private.").

Notably, judicial acknowledgment of an individual's right to informational privacy has not been limited to claims involving disclosures to the public at large; to the contrary, courts have recognized that this right may be implicated even when the disclosure at issue is to parents or other family members. *See, e.g., Nguon v. Wolf*, 517 F. Supp. 2d 1177, 1191–1193 (C.D. Cal. 2007) (recognizing that a student has "a Constitutionally protected privacy right with respect to disclosure of [their] sexual orientation" and requiring a compelling government interest that outweighs the student's privacy interest to justify revealing, even implicitly, a student's sexual orientation to their parents under both the federal and state constitutions); *Sterling*, 232 F.3d at 197–98 (recognizing privacy interest implicated in case involving disclosure of 18-year-old arrestee's suspected homosexuality to arrestee's grandfather).

Like an individual's HIV status, sexual orientation, gender identity, or sexual assault, the "personal matter" at issue here—the decision to have an abortion—is highly sensitive, intimate, and emotionally charged. *See, e.g., Thornburgh v. Am. Coll. of Obstetricians & Gynecologists*,

476 U.S. 747, 772 (1986), *overruled on other grounds by Casey*, 505 U.S. at 882 (“[f]ew decisions are more personal and intimate, more properly private, . . . than a woman’s decision . . . whether to end her pregnancy”); *cf. Roe v. Aware Woman Ctr. for Choice, Inc.*, 253 F.3d 678, 685 (11th Cir. 2001) (citing a number of decisions that have “pointed to abortion as the paradigmatic example of the type of highly sensitive and personal matter that warrants a grant of anonymity” in legal proceedings); *Nat’l Ass’n of Waterfront Employers v. Chao*, 587 F. Supp. 2d n.8 (D.D.C. 2008) (identifying “matters of a sensitive and highly personal nature” that may justify permitting a party to proceed in litigation anonymously to include “those dealing with birth control, abortion, homosexuality or the welfare rights of illegitimate children or abandoned families”).

As detailed above, mandating that minors either breach their own privacy (or have their privacy breached) by revealing the intimate and sensitive fact that they are pregnant and/or seeking abortion can result in serious, concrete harm beyond just the privacy invasion, including, *inter alia*, further traumatization of minors who are pregnant as a result of rape or sexual assault,¹⁰ and abuse or rejection at the hands of parents or sponsors upon their being made aware that the minors were or are engaged in culturally taboo activities (*i.e.*, having sex or seeking or obtaining an abortion). *See supra* 10–15. Indeed, the record in this case shows that fears of “discrimination and intolerance,” *Doe*, 15 F.3d at 267; *see also Powell*, 175 F.3d at 111–12, and retaliation if this extremely sensitive, private health information is disclosed are not speculative. For example, Defendants told Ms. Poe’s prospective sponsor about her pregnancy and abortion

¹⁰ Moreover, compelling minors who are pregnant as a result of rape or sexual assault to reveal their pregnancies and abortion decisions to parents or sponsors may also require them to reveal the circumstances by which they became pregnant (*i.e.*, their sexual assault), which – as noted above – is another extremely sensitive type of information that courts have recognized deserve privacy protections. *See Bloch*, 156 F.3d at 685–86.

decision; he then threatened her with harm. *See supra* 7. This threat in turn likely scuttled Ms. Poe's prospect of release to this sponsor and the opportunity to be reunited with a family member. Defendants simply cannot justify this blatant violation of minors' informational privacy rights and all associated harms, especially where (as here) the evidence shows that, *inter alia*, their blanket policy applies regardless of the harm it would impose on a minor and/or her family, *supra* 19–20, and that minors often already have a trusted adult to discuss their decision with, should they choose to do so. Rangel Decl. ¶ 14; Kaley Decl. ¶ 7. Accordingly, Plaintiffs are likely to succeed on their informational privacy claim.

II. PLAINTIFFS WILL SUFFER IRREPARABLE INJURY UNLESS DEFENDANTS ARE ENJOINED.

As explained above, there has been a steady stream of class members who have requested abortion information or access to abortion since this Court's preliminary injunction on March 30, 2018. *See* Kaley Decl. ¶ 5 & Exhibit A (showing that at least 31 minors requested access to abortion after March 30, 2018 through to the end of 2018, and that at least 22 minors requested access to abortion in just the first six months of 2019). In fact, Plaintiffs' counsel are currently helping a class member seeking access to abortion as of the date of this submission, and have assisted five other class members who requested abortion within just the last two months. *Id.*

The frequency of unaccompanied immigrant minors seeking access to abortion while in ORR custody underscores that Plaintiff class members will imminently experience irreparable harm if Defendants are permitted to resume their policy of coercing minors to tell (or have Defendants tell) parents or sponsors that they are pregnant and/or seeking or have obtained an abortion. As discussed above, and in the attached declarations, there are myriad reasons why some minors do not want to tell their parents and/or sponsors of their pregnancy and abortion decision, including, *inter alia*, fear of abuse and rejection, fear of harm to parental and familial

relationships, and concern that disclosure will impose undue stress and additional burdens on their parents. *See supra* 10–12; Ehrlich Decl. ¶¶ 9–29; Rangel Decl. ¶¶ 4–14; *see also Comm'r, Ind. State Dep't of Health*, 258 F. Supp. 3d at 946–47.

These fears and concerns are not unfounded. To the contrary, as established above, experts in the field and major medical organizations confirm that mandating that minors' parents and/or potential sponsors be informed of their pregnancies and desire for an abortion risks, among other things: exposing minors to emotional or physical abuse once they are reunified with or released to their parents and/or sponsor, Rangel Decl. ¶ 12; Ehrlich Decl. ¶ 33 (citing APHA opinion); *id.* ¶ 35; undermining minors' opportunity to be placed with their sponsor, Rangel Decl. ¶¶ 10, 13; Ehrlich Decl. ¶ 33 (citing APHA opinion that minors may be forced to leave home upon disclosure); straining or fracturing family relationships, and leaving minors isolated and ostracized, Rangel Decl. ¶¶ 9, 13; Ehrlich Decl. ¶ 19; *id.* ¶ 31 (citing AAP opinion); *id.* ¶ 33 (citing APHA opinion); and further traumatizing minors who are not emotionally ready to discuss the potentially traumatic experience (*i.e.*, rape or sexual assault) that resulted in their pregnancies, Rangel Decl. ¶ 9. Indeed, as detailed above, Defendants themselves admit the forced disclosure to parents can cause harm, *supra* 8, and this harm is further evidenced by the record in this case, including Ms. Poe's example where both her parent and her sponsor threatened abuse if she had an abortion, causing her to briefly retract her abortion request, even though she expressed a desire to self-harm if forced to carry her pregnancy to term. *See supra* 7–8. Furthermore, Ms. Poe's sponsor's threats of violence in reaction to the forced disclosure of her desired abortion likely prevented that sponsor from taking custody of Ms. Poe. Subjecting minors to these risks and harms under the pretense that doing so will "help lead to the best decisions" and "advance the [minor's] best interests," Sualog Decl. ¶ 7, is especially unwarranted

where, as here, the evidence shows that many minors considering abortion already have a trusted adult (often an older sibling, attorney or social worker) in whom they can confide and with whom they can discuss their abortion decision. Rangel Decl. ¶ 14; Kaley Decl. ¶ 7.

III. THE BALANCE OF HARM STRONGLY FAVORS PLAINTIFFS.

Plaintiffs will suffer irreparable harm in the absence of relief from this Court, while Defendants will suffer none. Defendants have already been enjoined from enforcing their compelled disclosure policy for over a year, since this Court first issued preliminary injunctive relief on May 30, 2018. And in the many years prior to the confirmation of then-Director Scott Lloyd, ORR did not coerce minors into telling anyone about their pregnancy or abortion decision against their will, and there is no evidence that the absence of a forced disclosure policy interfered with ORR’s operations. Thus, the balance of harm is heavily in Plaintiffs’ favor.

IV. A PRELIMINARY INJUNCTION SERVES THE PUBLIC INTEREST.

The public interest is served when constitutional rights are protected. “It is always in the public interest to prevent the violation of a party’s constitutional rights.” *Simms v. District of Columbia*, 872 F. Supp. 2d 90, 105 (D.D.C. 2012) (quoting *Abdah v. Bush*, No. 04-cv-1254, 2005 WL 711814 at *6 (D.D.C. Mar. 29, 2005)); *accord Lamprecht v. F.C.C.*, 958 F.2d 382, 390 (D.C. Cir. 1992) (“a [government] policy that is unconstitutional would inherently conflict with the public interest”); *Newsom ex rel. Newsom v. Albemarle Cty. Sch. Bd.*, 354 F.3d 249, 261 (4th Cir. 2003) (“Surely, upholding constitutional rights serves the public interest.”); *Planned Parenthood Ass’n of Cincinnati, Inc. v. City of Cincinnati*, 822 F.2d 1390, 1400 (6th Cir. 1987) (“the public is certainly interested in the prevention of enforcement of ordinances which may be unconstitutional”); *Carey v. Klutznick*, 637 F.2d 834, 839 (2d Cir. 1980) (“the public interest ... requires obedience to the Constitution”). In the instant case, there is no conceivable way the

public interest will be adversely affected by prohibiting Defendants from mandating that minors' parents and sponsors be notified of minors' pregnancies and/or abortion decisions against the minors' will.

CONCLUSION

For all of the foregoing reasons, Plaintiffs respectfully request that this Court issue a preliminary injunction prohibiting Defendants from revealing a minor's pregnancy or abortion decision, or coercing the minor into revealing her pregnancy or abortion decision herself, unless the minor provides uncoerced consent.

August 8, 2019

Respectfully submitted,

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**Admitted pro hac vice*

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Exhibit 1

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

J.D., on behalf of herself and others similarly)
situated, *et al.*,)
Plaintiffs,)
v.) Civil No. 17-cv-02122-TSC
ALEX M. AZAR II, *et al.*,)
Defendants.)

DECLARATION OF LINDSEY KALEY

I, Lindsey Kaley, pursuant to 28 U.S.C. §1746, declare under penalty of perjury that the following is true and correct:

1. I am currently employed as an attorney at the American Civil Liberties Union Foundation’s Center for Liberty, where I have worked since September 2017.
2. As ordered by this Court, ECF No. 135, English and Spanish versions of a notice are distributed to all pregnant unaccompanied children (“UACs”) in ORR custody. Per this Court’s order, the notice is required to be made available to all UACs and the information in the notice is also required to be provided orally both as part of orientation for new UACs and at the time any UAC is informed that she is pregnant.
3. The notice informs pregnant UACs of their rights, including that they have a right to decide whether to carry their pregnancies to term or to have an abortion, that no one who works for the government or the shelter can force their decision either way, and that no one who works for the government or the shelter can tell anyone about their pregnancy or decision to have an abortion if they don’t want them to do so.

4. My name and contact information are included on those notices, informing UACs that if they have any issues in accessing abortion they can contact me.

5. Although Plaintiffs' counsel has no way of formally tracking class members' requests, since the notices were first distributed in April 2018, I have been contacted by and provided assistance to approximately 31 class members who were seeking access to abortion information, judicial bypasses, and/or abortion. In fact, I am currently helping to ensure access to abortion for a pregnant UAC as of the date of this submission, and I have assisted five other UACs who requested abortions within the last two months. Moreover, documentation recently obtained by non-profit Equity Forward in response to a request made under the Freedom of Information Act (FOIA), attached hereto as Exhibit A, reveals that at least 31 minors requested access to abortion after March 30, 2018 through to the end of 2018, and that at least 22 minors requested access to abortion in just the first six months of 2019 (January through June).

6. The majority of UACs with whom I have discussed the topic have not told their parents or sponsors—often family members already residing in the United States who assume physical custody of the minor upon release and act as a de facto parent or guardian—that they are seeking an abortion, or even that they are pregnant. Many of them tell me that they do not want to tell their parents or sponsors. The minors provide a variety of reasons for why they would prefer not to disclose the information, including that they are afraid of their parents' reactions, or they fear that a potential sponsor will no longer want to sponsor their release from ORR custody if the sponsor finds out that they are pregnant and/or seeking an abortion.

7. Even when pregnant UACs decline to discuss their pregnancy or abortion decision with their parents or sponsor, they are surrounded by other adults who are available to discuss their reproductive health choices. These adults include clinicians and case workers at the

ORR shelters, who are coordinating UAC's access to the abortion and are present at every step of the process, as well as other professionals from various nonprofit organizations that advocate for UACs while they are in ORR shelters.

8. Given the continued arrival of large numbers of unaccompanied minor immigrants, the calls that we regularly receive from class members, and the frequency of abortion requests as reflected in Defendants' own documents, *see, e.g.*, Ex. A, it is completely predictable that there will be class members in the coming weeks who seek access to abortion—indeed, I am assisting one now—and some will not want to disclose their pregnancies and/or abortion decisions to their parents or sponsors.

Dated: August 8, 2019
New York, New York



Lindsey Kaley

Exhibit A

A. Number	Last.Name	First.Name	Program.Name Requested	Faithbased Requested	State.Requested	TOP.Date Requested	GestAge Requested	Program.Name Performed	Faithbased Performed	State.Performed	TOP.Performed Date	GestAge Perform ed	ORR.Funded	TOP.Year	Notes	Notes - SIR, options couns., IME/MC
(b)(6)	SWK Canutillo	0	Texas	2014-01-02	12 weeks	SWK Canutillo	0	New Mexico	2014-02-04	approx 16 weeks	not clear	2014				Case Review Doc not uploaded to RFP Folder
	SWK Casa Blanca	0	Texas	2014-04-24	18 weeks	SWK Casa Blanca	0	Texas	2014-05-09	19 weeks	no	2014	judicial bypass; approved by ORR		Planned Parenthood; SIRs/UAC Case Review not uploaded to RFP folder	
	Catholic Charities Boystown	1	Florida	2014-09-17	7 weeks	Lorraine Thomas	0	Florida	2014-10-14	approx 11 weeks	not clear	2014	UC reported [REDACTED]		SIRs not uploaded to RFP folder	
	SWK Lemon Grove	0	California	2015-04-28	10.5 weeks	SWK Lemon Grove	0	California	2015-05-12	approx 14 weeks	yes	2015				
	SWK Casa Blanca	0	Texas	2015-06-01	approx 9 weeks	SWK Casa Blanca	0	Texas	2015-06-26	approx 15 weeks	yes	2015	UC pregnancy SIR 5/27; judicial bypass			
	Bokencamp	0	Texas	2015-06-11	approx 8 weeks	Heartland CHAP	0	Illinois	2015-07-08	approx 10 weeks	yes	2015	(b)(6)			
	Cayuga Centers	0	New York	2015-08-31	approx 9 weeks	Cayuga Centers	0	New York	2015-09-11	approx 10.5 weeks	no	2015	decision date is not entirely clear (source UACSIRI); ORR approval on 9/8/015		Planned Parenthood in NY	
	Children's Village Shelter	0	New York	2015-09-22	approx 18 weeks	Children's Village Shelter	0	New York	2015-10-14	approx 20.5 weeks	no	2015				
	Children's Village Shelter	0	New York	2015-09-29	approx. 17 weeks	Children's Village Shelter	0	New York	2015-10-09	approx. 18 weeks	no	2015	09/04/2015 - 7 weeks pregnant			
	SWK Lemon Grove	0	California	2015-11-04	not clear	not clear	0	not clear	2015-11-07	not clear	no	2015				
	Leake and Watts	0	New York	2015-11-09	not clear	Leake and Watts	0	New York	2015-11-23	not clear	no	2015				
	Cayuga Centers	0	New York	2015-11-12	approx 12 weeks	Cayuga Centers	0	New York	2015-11-24	approx 14 weeks	yes	2015	Planned Parenthood			
	Children's Village Shelter	0	New York	2015-11-18	approx 14 weeks	Children's Village Shelter	0	New York	2015-12-03	15.4 weeks	yes	2015	(b)(6)			
	IES Los Fresnos	0	Texas	2015-12-07	approx 6.5 weeks	KidsPeace/Kids Haven	0	Pennsylvania	2016-01-21	after 10.5 weeks	yes	2016	TOP was preformed in January....SIR states infection post procedure			
	SWK Casa Quetzal	0	Texas	2016-05-27	8-2 weeks	SWK Casa Quetzal	0	Texas	2016-06-30	6-11 weeks	yes	2016	Houston Women's Center, LMP 5/15			
	Morrison Downtown	0	Oregon	2016-07-12	not clear, est. at least 10 weeks	Morrison Downtown	0	Oregon	2016-07-26	not clear	yes	2016	Lovejoy Surgicenter			
	SWK Estrella	0	Arizona	2016-08-07	4-6 weeks	SWK Estrella	0	Arizona	2016-08-16	8-10 weeks	yes	2016	Planned Parenthood in Tempe Arizona			
	Homestead	0	Florida	2016-11-02	not clear	KidsPeace/Kids Haven	0	Pennsylvania	2016-12-02	approx 11-12 weeks	No	2016	(b)(6)		Women's Hospital	
	SWK Casa Quetzal	0	Texas	2016-11-14	approx 2 to 6 weeks	Heartland CHAP	0	Illinois	2016-11-28	approx 8-12 weeks	yes	2016	LMP, September 2016			
	Crittenton Shelter	0	California	2016-11-22	approx 2-4 weeks	Crittenton Shelter	0	California	2016-12-05	approx 4-6 weeks	No	2016	LMP, 10/23/16		Planned Parenthood	
	SWK Estrella	0	Arizona	2016-11-22	approx 5.5 weeks	SWK Case Estrella	0	Arizona	2016-12-06	approx 7.5 weeks	yes	2016	LMP, 10/11/2016			
	SWK Sol	0	Arizona	2016-11-28	approx 7 weeks	SWK Hacienda del Sol	0	Arizona	2016-12-14	approx 11 weeks	yes	2016	Planned Parenthood, LMP 11/05/2016			
	Homestead	0	Florida	2016-12-07	approx 6 weeks	Heartland SCIV	0	Illinois	2016-12-20	approx 9 weeks	yes	2016	LMP, 10/28/2016		Planned Parenthood	
	Morrison	0	Oregon	2016-12-21	6 weeks	Morrison Downtown	0	Oregon	2017-01-05	9 weeks	No	2017	options counseling provided; UC requested a first trimester termination			

(b)(6)	Homestead	0	New York	2016-12-28	approx 8-10 weeks	Leake & Watts TFC	0	New York	2016-12-30	approx 8-10 weeks	No	2016	LMP, 10/10/2016	Planned Parenthood
	SWK Kokopelli		Arizona	2017-01-04	approx 12 weeks	SWK Kokopelli	0	Arizona	2017-03-02	approx 16 weeks	No	2017	(b)(6)	Camelback Family Planning
	BCFS San Antonio		Texas	2017-02-01	approx 3 weeks	na		na	na	na	na		TOP request rescinded on 02/03/2017 however must have requested TOP again and rescinded on 3/13/2017	
	Heartland		Illinois	2017-02-01	approx 7 weeks	na		na	na	na	na		TOP Request rescinded on 02/02/2017	
	St Pjs Childrens Home		Texas	2017-02-17	approx 8 weeks	SWK Casa Blanca		Texas	2017-03-02	approx 9 weeks	No	2017	Chemical Termination	
	SWK Las Palmas		Arizona	2017-03-20	approx 9 weeks	na		na	na	na	na		Child reunified on 4/8/2017	
	SWK Kokopelli		Arizona	2017-06-15	approx 16 weeks	na		na	na	na	na		TOP Request rescinded on 06/19/2017	
	SWK Sol		Arizona	2017-07-05	approx 8 weeks	na		na	na	na	na		TOP Request rescinded on 07/07/2017 after disclosure with FOC and family	
	SWK Las Palmas		Arizona	2017-08-10	approx 8 weeks	na		na	na	na	na		Unclear if TOP Request; Advised by program that not a TOP request however underwent counseling; child reunified	
	IES Los Fresnos		Texas	2017-09-19	approx 9 weeks	IES Los Fresnos		Texas	2017-10-25	15 weeks	No	2017	Consensual	
	SWK Glendale		Arizona	2017-09-25	approx 9 weeks	na		na	na	na	na		TOP Request rescinded on 9/28/2017 after family session.	
	IES Los Fresnos		Texas	2017-10-23	approx 2 weeks	na		na	na	na	na		Age redetermination-11-6-2017 discharged	
	Abbott House		New York	2017-11-09	approx 7 weeks	Abbott House		New York	2017-11-09	8 weeks	No	2017	Program did not notify ORR of TOP Request nor did the program obtain ORR Director approval	Mt. Sinai Hospital
	Morrison Downtown		Oregon	2017-11-27	approx 9 weeks	na		na	na	na	na		Notification to ORR HQ on 12/2; Child refuses OB appt; US ok if monitor is turned away; Age Redetermination (19yrs); DC to ICE on 12/20/2017	
	Abbott House		New York	2017-11-29	approx 20 weeks	Abbott House		New York	2017-12-20	22 weeks	No	2017	(b)(6)	
	YouthCare		Washington	2017-12-05	approx 4 weeks	YouthCare		Washington	2017-12-05	approx 4 weeks	No	2017	Child evaluated by OB and administered mifepristone (chemical termination) on 12/5;	Harborview
	Crittenton Shelter		California	2017-12-29	approx 16 weeks	na		na	na	na	na		Child reunified on 1/14/2018	
	SWK Campbell		Arizona	2018-01-09	approx 10 weeks	na		na	na	na	na		(b)(6)	
	IES Norma Linda		Texas	2018-01-22	approx 9 weeks	na		na	na	na	na		Pregnancy result of consensual relations; DHUC noticed request in SIR on 1/26/2018; 2/1 informed by program that child rescinded request	
	SWK Nueva Esperanza		Texas	2018-01-24	Approx 6 weeks	na		na	na	na	na		Request rescinded on 2/7/2018; options discussed with Probar attorney on 1/24/2018; unclear when request was made.	
	SWK Antigua		Texas	2018-03-07	approx 4-5 weeks	na		na	na	na	na		Pregnancy result of consensual relations to 15 yo male in COO; reunified 3/17	
	SWK Casa Blanca		Texas	2018-03-12	Unknown	na		na	na	na	na		UAC aged out on 3/14/2018; 2 days after her request-unknown GA	
	SWK Antigua		Texas	2018-04-03	~8-9 weeks	na		na	na	na	na		(b)(6) minor expressed that she wants to have her baby	
	SWK Rio Grande		Texas	2018-04-04	~4-5 weeks	na		na	na	na	na		Consensual Activity; minor reunified 4-7-2018	
	SWK Franklin		Texas	2018-05-07	Approx 18 weeks	na		na	na	na	na		Minor requested information on 5/4/2018; rescinded request on 5/10 after initial OB appt; consensual; reunified 5/26	
	SWK Nueva Esperanza		Texas	2018-05-07	Approx 21 weeks	na		na	na	na	na		Consensual relations; Minor requested additional information on 2nd term abortion; decided to rescind request and proceed with adoption	
	SWK Estrella		Arizona	2018-05-22	4 weeks	NA		na	na	na	na		Consensual relations with 15 yo boyfriend; UAC reunified	

(b)(6)	SWK Montezuma	Texas	2018-06-06	Approx 14 weeks	SWK Montezuma		Texas	2018-06-29	approx 18 weeks	No	2018	Neg preg during IME, c/o abd pain Preg +, consensual relations, sought TOP via attorney; Judicial Bypass granted 6/15, 2 day procedure 6/28, 6/29	
Youth for Tomorrow		Virginia	2018-06-21	Approx 9 weeks	na		na	na	na	na		(b)(6) TOP but wanting to seek services after reunification; 6/18 seen in ED for ABD pain and dx with possible miscarriage; reunified on 7/14/2018 at ~12weeks IUP.	req
SWK Casa Quetzal		Texas	2018-06-27	Unknown	na		na	na	na	na		Minor was determined to be non-pregnant, possible spontaneous abortion-excess tissue on US; IME pregnancy test +; 6-28 initial OB APPT; OB Pregnancy test neg, HCG neg.	
SWK Nueva Esperanza		Texas	2018-07-01	7 weeks	SWK Nueva Esperanza		Texas	2018-07-20	Approx 9 weeks		2018	Notified of an attorney arranging for medical appt. Consensual relations with 19 yo male; unclear when the request was made... early July 2018 likely.	
SWK Estrella		Arizona	2018-07-11	Approx 28 weeks	na		na	na	na	na		(b)(6) minor was informed 28 weeks gestational age beyond GA for abortive procedure; Minor stated she will try to take care of the baby but if not she will ask her Aunt	
Catholic Charities Boystown		Florida	2018-07-12	Approx 12 weeks	Rising Ground		New York	2018-07-27	Approx 14 weeks	No	2018	(b)(6)	
Heartland Guadalupe		Illinois	2018-07-25	7 weeks	Heartland Guadalupe		Illinois	2018-08-23	Approx 11 weeks	No	2018	Consensual relations although unclear of circumstances; ACLU involved; obtained judicial bypass 8/13; received TAR 8/17; no documentation in portal	
SWK Antigua		Texas	2018-07-31	6-7 weeks	Southwest Keys Antigua		Texas	2018-09-07	Approx 12 weeks	No	2018	Consensual relations with 18 yo ex-boyfriend in COO	
SWK Casa Franklin		Texas	2018-08-01	4 weeks 6 days	NA		na	na	na	na		(b)(6)	
SWK Antigua		Texas	2018-08-02	10-11weeks	NA		na	na	na	na		Consensual relations with boyfriend in COO; after the child talked with her mother and was told it will be OK, child rescinded her TOP request	
David and Margaret		California	2018-08-03	10 weeks 2 days	David and Margaret		California	2018-08-16	Approx 12 weeks	Pending	2018	(b)(6) Requests no parental notification; SMR submitted 8/7 seeking federal funds.	
Heartland CHAP		Illinois	2018-08-04	Approx 8 weeks	Heartland CHAP		Illinois	2018-08-28	Approx 12 weeks	No	2018	(b)(6)	
SWK Antigua		Texas	2018-08-07	7 weeks	SWK Antigua		Texas	2018-09-07	approx 11 weeks	Pending	2018	(b)(6) 7 weeks gestation by dates on 8/7	
Homestead		Florida	2018-09-17	16 weeks	NA		na	na	na	na		(b)(6)	
Homestead		Florida	2018-09-17	9 weeks	SWK Casa El Presidente		Texas	2018-10-06	Approx 11 weeks	No	2018	Consensual relations with 20 yo male in COO;	
BCFS San Antonio		Texas	2018-10-01	~8 weeks	na		na	na	na	na		Consensual relations with 19 yo male in COO; Twin gestation; aged out on 10/18/2018	
BCFS San Antonio		Texas	2018-10-03	~8-9weeks	BCFS San Antonio		Texas	2018-10-20	Approx 12 weeks	No	2018	Consensual relations with 17 yo male in COO	
Cayuga Centers		New York	2018-10-19	~11 weeks	Cayuga Centers		New York	2018-11-07	Approx 18 weeks	No	2018	(b)(6) initially thought to be 11 weeks gestation but US near time of procedure indicated 18 weeks.	
SWK El Presidente		Texas	2018-11-11	~8 weeks	na		na	na	NA	NA		Minor rescinded request after judicial bypass was obtained. Discharged to sponsor	
The Villages		Kansas	2018-11-13	4-6 weeks	The Villages		Kansas	2019-01-04	Approx 13 weeks	Yes	2019	(b)(6)	
Homestead		Florida	2018-11-15	~8-9 weeks	na		na	na	na	na		(b)(6)	

(b)(6)	SWK Nueva Esperanza	Texas	2018-11-20	9-10 weeks	SWK Nueva Esperanza	Texas	2018-12-14	Approx 14 weeks	No	2018	Consensual with 18 yo male in COO; voluntary departure	
	SWK Antigua	Texas	2018-11-20	18-19 weeks	SWK Blanca	Texas	2018-12-06	Approx 19 weeks	No	2018	(b)(6)	
	BCFS Driscoll	Texas	2018-12-17	~20 weeks	na	na	na	na	na		Limb body wall complex congenital anomaly-fatal condition; discharged 12/21 to sponsor to pursue termination; MFM discussed termination vs carrying to term; minor opted for termination	
	Heartland Intl Childrens RC	Illinois	2018-12-19	~12 weeks	Heartland Intl Childrens RC	Illinois	2019-01-08	16 weeks	No	2019	Notified on 1-4-2019; consensual relations in COO; Initial placement at Homestead->Heartland	
	SWK Casa Montezuma	Texas	2018-12-26	~9 weeks	SWK Montezuma	Texas	2019-02-06	~14 weeks	No	2019	Consensual	
	KidsPeace	Pennsylvania	2019-01-02	4-5 weeks	na	na	na	na	na		(b)(6)	
	SWK Nueva Esperanza	Texas	2019-01-11	8-9 weeks	SWK Nueva Esperanza	Texas	2019-02-08	~13 weeks	No	2019	Consensual activity	
	CC Houston	Texas	2019-01-15	~7 weeks	Leake and Watts	New York	2019-02-19	~11-12 weeks	No	2019	(b)(6)	
	SWK El Presidente	Texas	2019-01-29	~16 weeks	na	na	na	na	na		Consensual Activity; Minor requested sponsor notification; minor reunified with sponsor	
	CHSI Casa Norma Linda	Texas	2019-02-01	~8-10 weeks	CHSI Casa Norma Linda	Texas	2019-03-01	~14 weeks	No	2019	minor denied SA or assault, procedure done on 3-1; had evaluation and need second procedure 1 week later	
	SWK San Diego	California	2019-03-05	~3-4 weeks	SWK San Diego	California	2019-03-25	~6 weeks	No	2019	Consensual activity with 20 yo male in COO	
	SWK Casa Houston	Texas	2019-03-07	~15 weeks	na	na	na	na	na		Consensual activity; rescinded request ~3/15/2019 and informed attorney of decision	
	BCFS Driscoll	Texas	2019-03-14	~5-6 weeks	Crittenton Shelter	California	2019-04-04	~9 weeks	Yes	2019	Assaulted; during IME child stated not wanting baby; during OB evaluation child requested TOP; confusion on circumstances initially believed to be consensual but later determined to be due to assault.	
	SWK Antigua	Texas	2019-03-18	5-6 weeks	SWK Antigua	Texas	2019-04-12	~10 weeks	No	2019		
	KidsPeace	Pennsylvania	2019-03-27	~12 weeks	Kidspeace	Pennsylvania	2019-04-26	~17 weeks	No	2019	Consensual activity; later rescinded and stated no sexual activity and not being pregnant at IME; HCG Positive	
	Heartland CHAP	Illinois	2019-03-28	~5-6 weeks	Heartland CHAP	Illinois	2019-04-10	~6-8 weeks	No	2019	Consensual Activity; no documentation of US	
	SWK Nueva Esperanza	Texas	2019-04-03	~19-20 weeks	SWK Casa Blanca	Texas	2019-04-18	~22 weeks	No	2019	Consensual Activity; 2-part procedure	
	Bethany Christian Services	Tennessee	2019-04-03	~6-7 weeks	KidsPeace	Pennsylvania	2019-06-01	~15 weeks	No	2019	(b)(6)	
	Mercy First	New York	2019-04-17	~4 weeks	Mercy First	New York	2019-04-27	~6 weeks	No	2019	consensual activity	
	Homestead	Florida	2019-04-20	~4 Weeks	KidsPeace	Pennsylvania	2019-05-24	~18 weeks	No	2019	consensual activity	
	Kidspeace	Pennsylvania	2019-04-22	~4 weeks	Pending	Pending	Pending	Pending			Consensual activity	
	SWK Quetzal	Texas	2019-04-23	7 weeks	na	na	na	na			on 5-2-2019, minor informed staff of want to stop the termination process and proceed with pregnancy	
	SWK Las Palmas	Arizona	2019-05-06	~14 weeks	SWK Las Palmas	Arizona	2019-05-17	~15 weeks	Yes	2019	(b)(6)	
	SWK Kokopelli	Arizona	2019-05-21	14 weeks	SWK Kokopelli	Arizona	2019-06-15	~17 weeks	Yes	2019	(b)(6)	
	SWK Kokopelli	Arizona	2019-05-22	~13 weeks	SWK Kokopelli	Arizona	2019-06-14	~16 weeks	No	2019	Consensual Activity	
	BCFS Driscoll	Texas	2019-06-13	Pending	Pending	Pending	Pending	Pending			(b)(6)	
	SWK Combes	Texas	2019-06-14	~14 weeks	Pending	Pending	Pending	Pending			Consensual Activity	

Exhibit 2

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

J.D., on behalf of herself and others similarly)
situated, *et al.*,)
)
Plaintiffs,)
)
v.) Civil No. 17-cv-02122-TSC
)
ALEX M. AZAR II, *et al.*,)
)
Defendants.)
)

**DECLARATION OF J. SHOSHANNA EHRLICH, J.D., IN
SUPPORT OF PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION**

J. Shoshanna Ehrlich, J.D., declares the following:

1. I submit this declaration in support of Plaintiffs in the above-captioned case.

BACKGROUND AND QUALIFICATIONS

2. I am a Professor of Women's, Gender, and Sexuality Studies at the University of Massachusetts Boston, and I hold a J.D. from Northeastern University School of Law. The information relied on in forming my opinion comes from my 30-plus years of working with and studying teens seeking abortion care, in particular, teens who seek to terminate a pregnancy without the knowledge or consent of their parents.

3. After graduating from law school in 1982, for more than a decade, I represented teens who were seeking a judicial waiver of the state's law requiring parental consent for an abortion as a trained member of the Judicial Consent for Minors Lawyer Referral Panel (Referral Panel).

4. I have also been an active member of the Steering Committee of the Referral Panel for more than thirty years. In this capacity, I provide support to lawyers who represent

teens in bypass hearings (particularly those handling difficult cases), prepare training materials, and trouble-shoot problems that arise within the court system.

5. I have also provided expert legislative testimony on parental consent laws both in Massachusetts and in other states and have conducted trainings across the country for attorneys and reproductive health care providers regarding how to represent teens needing waivers of parental involvement requirements and how best to set up a coordinated system for providing such representation.

6. As an academic, I have researched and published extensively on this topic over the course of the past two decades or so. I have presented widely at conferences on the abortion rights of minors, including as an invited keynote speaker, and I have authored a prize-winning paper on the topic. My work in this area is widely cited by other scholars. I am also intimately familiar with the relevant scholarly literature.

7. In 2006, I published the book *Who Decides? The Abortion Rights of Teens*, which features the results of detailed interviews with 26 Massachusetts teens who went to court rather than tell their parents of their intended abortion. Their testimonies highlight the harsh costs of mandated disclosure policies and make clear that this is a misguided approach that results in tangible harms to young women.

8. My education, training, and experience are set forth in greater detail in my *curriculum vitae*, a copy of which is attached here as Exhibit A.

STATEMENT OF OPINIONS AND THE BASES AND REASONS FOR THEM

9. It is my understanding that Defendants in this case have adopted a policy requiring minors to tell their parents and prospective sponsors that they are pregnant and that they intend to have an abortion. If a minor refuses to do so, this policy dictates that notice be

given by shelter staff over the pregnant minor's objection.

10. I further understand that this is a blanket notification mandate to which there are, in practice, no permissible exceptions.¹

11. Based on my decades of experience, it is my expert opinion that Defendants' forced disclosure policy does not foster family communication and, more importantly, places minors at risk of serious harm.

12. It is my further opinion that young women are far better situated than Defendants to assess the likely risks of disclosure based on their own lived realities, which may well include a history of harsh parental treatment.

13. Indeed, for just these reasons, as detailed below, every major medical organization, including the American Medical Association and the American Academy of Pediatrics, has taken the position that minors should not be compelled to tell their parents of their abortion decision.

Grounded in the Realities of Their Lives: The Harms of Mandated Disclosure

14. The majority of minors in the United States voluntarily talk to at least one parent (most commonly a mother) about their pregnancy and intended abortion regardless of whether or not they live in a state with a parental involvement law.²

15. However, research has consistently shown that many minors choose not to tell their parents about their intended abortion for a number of critical reasons. As discussed herein, key concerns include, although are not limited to: fear of an adverse parental reaction, such as

¹ I understand that Defendants have claimed that their notification policy includes an exception for situations in which notification would expose the minor to abuse or harm. However, I have been informed by Plaintiffs' counsel that this exception has not been applied in practice, as is reflected in the case of Jane Doe, detailed below, and in the case of other minors, whose parents or sponsors threatened abuse following forced notification.

² Lee A Hasselbacher, et. al., *Factors Influencing Parental Involvement Among Minors Seeking an Abortion: A Qualitative Study*, 104 J. of Public Health 2207 (2014); Stanley K. Henshaw and Kathryn Kost, *Parental Involvement in Minors' Abortion Decisions*, 24 Family Planning Perspectives 196 (1992).

physical abuse, being thrown out of the house, or being forced to have the baby; preservation of the parent-child relationship; and shielding a fragile or overwhelmed parent from additional stress.³

16. For example, one study by Stanley Henshaw and Kathryn Kost of more than 1,500 unmarried minors having an abortion found that 30% of minors who did not tell their parents about their abortion decision had already experienced violence in their family, feared that violence would occur, or were afraid of being forced to leave home.⁴ The study showed that the some of the most common reasons for not telling a parent included fear that the parent would be disappointed or angry; concern that the parent was already under too much family, work, financial, or health-related stress; fear about pressure to leave home; other punishment; being beaten; or being forced to either continue the pregnancy or to have an abortion.⁵

17. Moreover, the minors in that study who did not tell their parents, but whose parents found out anyway, were more likely than those who told their parents to say that there had been physical violence between themselves and their parents, or that they were concerned that there might be such violence.⁶ The authors concluded that their data “suggest that informing parents of a daughter’s pregnancy would produce negative reactions in some families,” noting that “[a]mong minors whose parents found out about the pregnancy, 58% reported one or more adverse results of parental knowledge,” with a minimum of 6% of these minors experiencing “physical violence in the home, being beaten, being forced to leave home or having the health of

³ See, e.g., Committee on Adolescence, American Academy of Pediatrics, *The Adolescent's Right to Confidential Care When Considering Abortion* (2017), <https://pediatrics.aappublications.org/content/139/2/e20163861>; Erin K. Kavanagh, et. al., *Abortion-Seeking Minors’ Views on the Illinois Parental Notification Law: A Qualitative Study*, 44 Perspectives on Sexual and Reproductive Health 159 (2012); Mary S. Griffin-Carlson and Kathleen J. Mackin, *Parental Consent: Factors Influencing Adolescent Disclosure Regarding Abortion*, 28 Adolescence 109 (1993); Henshaw and Kost, *supra* note 2; Hyman Rodman, *Should Parental Involvement Be Required for Minors’ Abortions?*, 40 Family Relations 155 (1991).

⁴ Henshaw and Kost, *supra* note 2.

⁵ *Id.*

⁶ *Id.*

their parents affected,” and with 10% of the minors reporting that knowledge of their pregnancy “caused problems between their parents or between a parent and a stepparent.”⁷

18. These findings accord with my over thirty years of professional experience working with minors seeking access to abortion and my own published research on the topic. The teens that I have represented and interviewed over the years were very clear as to why they could not confide in their parents. Many had experienced harsh treatment at the hands of one or both parents and feared that disclosure of their abortion decision would result in further abuse, being thrown out of the house, or being forced to carry the pregnancy to term.

19. Others feared that their parents would be deeply disappointed in them or never trust them again, citing their fear of irreparably damaging the relationships they had with one or both parents as the basis for their non-disclosure. Virtually all of the young women in my study who gave this as a reason had a relatively good relationship with one or both parents. Although, at first blush, this may seem paradoxical, these young women were unwilling to risk destroying an important relationship by disclosing information that they anticipated would result in extreme disappointment, a loss of respect, and/or the erosion of trust. Critically in this regard, these fears were typically rooted in a history of parental silence or negative remarks about sex, which led these teens to believe that their parents would be shocked and disapproving upon learning their daughter was sexually active.

20. Still other minors worried that the stress of disclosure would be too much for their parents to handle, given their knowledge of the existing financial, physical, social, or psychological burdens their parents were carrying, and thus chose not to disclose their situation to their parents in order to protect them from this undue stress.

21. Despite a common perception that most young women would seek to avoid

⁷ *Id.*

informing their parents about their intended abortion based on the ungrounded assumption that they would “freak out,” both my experience and the research demonstrates that minors’ concerns about disclosure are deeply rooted in the complex realities of their lives.⁸

22. None of the teens I have worked with or interviewed over the years made the decision to seek judicial authorization for an abortion rather than involve a parent lightly; to the contrary, the fact that they chose to submit themselves to a judicial process that they consistently describe as “terrifying,” “intimidating,” and “nerve-wracking,”⁹ rather than notify their parents, speaks volumes to the clarity and strength of their convictions regarding the adverse impact of parental disclosure. Reflecting the gravity of their decision-making process, rather than lumping their parents together as an indistinguishable unit—as we might blithely assume teens are likely to do—these young women regarded their parents as separate and distinct individuals. Accordingly, they made fine-tuned assessments of the likely reaction of each parent based upon the applicable history and dynamic of their relationship with that parent. In short, in assessing their parents’ potential reaction to the news that they were pregnant and intending to seek an abortion, these teens drew upon long-standing patterns of parental mistreatment and parental behaviors to conclude that the risk of disclosure was too great,¹⁰ and their explanations reflected a nuanced assessment of the risks of disclosure within the intimate context of their individualized family history.

23. My personal experience, my research, and the literature also make clear that

⁸ J. Shoshanna Ehrlich, Who Decides? The Abortion Rights of Teens, 130-34 (2006); *see also* Henshaw and Kost, *supra* note 2.

⁹ Ehrlich, *supra* note 8 (one teen stated that she was so frightened by the court process that she forgot the answers to some of the simple questions she was asked); *see also*, Carol Sanger, *Decisional Dignity, Teenage Abortion, Bypass Hearings, and the Misuse of Law*, 18 Colum. J. Gender & L. 409 (2009).

¹⁰ Equally telling, none of the teens in my study who described their relationship with their parents as being good identified fear of a parent’s reaction as a reason for non-disclosure. In short, this was not a concern for those teens who enjoyed a more stable relationship with one or both parents. Again, this highlights the carefully calibrated assessments that these young women made as to the precise nature of the risks that disclosure entailed in light of their own personal family histories.

young women's assessments of the risk of disclosure are often not off-base. Indeed, the Committee on Adolescence of the American Academy of Pediatrics has concluded that "[a]dolescents who are strongly opposed to informing parents about their intent to have an abortion tend to predict family reactions accurately."¹¹ This highlights the critical importance of listening to and respecting the individual assessments that young women make regarding the potential risks of parental disclosure.

24. An example may be illustrative. Mary Souza is one of the teens I interviewed who could not disclose her pregnancy and abortion plans to her father due to her fear of his reaction.¹² Mary's parents had recently divorced, and she was living with her father as her mother had moved to a new community. However, their relationship had quickly deteriorated. It was punctuated by extremely angry and bitter arguments during which her father would spit at her. He also had engaged in abusive behavior of a far more serious nature, and she was growing increasingly afraid of him.

25. In addition to fearing for her physical safety, Mary was scared that her father would retaliate by labelling her a whore and taking out a delinquency petition in the local juvenile court. This was far from an idle threat, as this had been his response when he had found out that she had been sexually active with a prior boyfriend. Making this threat even more real, he had also filed a subsequent delinquency petition in his fury following a particularly heated fight.

26. As with the other teens in my study, Mary's statement that her dad would "flip out" if she told him about her pregnancy and abortion plans was well-grounded in a tumultuous history. It is worth stressing that no teen that I interviewed cited fear of a parent as the reason for

¹¹ Committee on Adolescence, American Academy of Pediatrics, *supra* note 3.

¹² The names used here are pseudonyms which were chosen by the young women.

non-disclosure without providing details that supported their assessment of the risk.

27. Given Mary's fear of her father, it is worth considering why she did not instead confide in her mother. Illustrative of the above-discussed finding from my study that young women carefully distinguished between their parents when considering the likely impact of disclosure, fear was not a consideration *vis a vis* her mother. As Mary explained, her mother was her closest friend, and she was planning to go live with her once the school year ended as the situation at her dad's home had become untenable. However, she was worried that her mother would think less of her for getting pregnant, and possibly not allow her to come live with her—a risk that she was unwilling to take given her current living situation. Compounding this concern, she was aware that her mother had been under terrible stress since the divorce, and she worried that news of her pregnancy might be too much for her to handle.

28. Mary's situation starkly illustrates the potentially devastating risks of compelled government disclosure. First and foremost, forced notification of Mary's father would have put Mary at risk of imminent physical danger and being dragged into juvenile court by her abusive father with whom she lived. There is clearly no gain that would be realized from informing such a parent about his daughter's pregnancy and abortion plans. Nothing in their history suggests that he would be a source of comfort or support, but rather suggests only the opposite. Additionally, forced disclosure might well have damaged Mary's relationship with her mother, thus costing her a safe living space—a result that Mary was unwilling to gamble on given her desperate need to escape from her current unsafe living situation.

29. The case of another minor, Beth, is also illustrative. As Beth explained when considering whether or not to share her abortion decision with her father: "I don't know how he would have handled it. He's a manic-depressive. He's an alcoholic, and...*right around the*

*spring [the time of her pregnancy], it's his time to try and commit suicide, and...I didn't want to add to any of his problems.*¹³ Again, we see here the careful attention to the detailed nature of a parent's life situation. Not only is Beth aware of her father's drinking and mental health issues, she is attuned to the cyclical nature of his despair. Thus, it is possible, that had she been faced with the abortion decision in the fall, Beth might have opted to confide in her father when he was less prone to suicide attempts.

Prominent Medical Professional Organizations Oppose Mandatory Disclosure

30. Proponents of parental notification mandates assert that this policy approach serves to enhance family communication and strengthen the parent-child bond. However, this view has been soundly repudiated by medical and health professionals who work with adolescents and their parents. To this end, although agreeing that teens should be encouraged to involve their parents, the American Medical Association, the Society for Adolescent Health and Medicine, the American Public Health Association, and other health professional organizations have reached a consensus that a minor should not be compelled or required to involve her parents in her decision to obtain an abortion.¹⁴

31. For example, in their policy statement on the issue, the Committee on Adolescence of the American Academy of Pediatrics (AAP) recognizes that “[i]nvoluntary parental notification can precipitate a family crisis,” and that in addition to being met by violence, disclosure may irreparably damage the parent-child bond, including actual rejection.¹⁵ Succinctly encapsulating these harms, Professor Hyman Rodman, “one of the country’s top 30

¹³ Ehrlich, *supra* note 8 at 122.

¹⁴ Committee on Adolescence, American Academy of Pediatrics, *supra* note 3 (citations to the policy statements of these organizations are provided at notes 7-13.)

¹⁵ *Id.*

scholars in the field of family science,”¹⁶ writes that “when communication is forced it is more likely to be hostile and nonsupportive...if the line is blocked, attempts to force it open risk rupturing the line altogether...and...may shatter rather than shore up the family.”¹⁷ Accordingly, the AAP has concluded that “mandating parental involvement does not achieve the intended benefit of promoting family communication but does increase the risk of harm to the adolescent by delaying access to appropriate medical care or increasing the rate of unwanted births.”¹⁸

32. The American Medical Association’s (AMA) Medical Ethics Opinions on the provision of health care for minors also makes clear that when minors request that their abortion decisions be kept confidential, physicians should “[n]ot feel or be compelled to require a minor patient to involve her parents before she decides whether to undergo an abortion.”¹⁹ As the AMA explains, “[t]he patient, even an adolescent, generally must decide whether, on balance, parental involvement is advisable. Accordingly, minors should ultimately be allowed to decide whether parental involvement is appropriate.”²⁰

33. Similarly, the American Public Health Association (APHA) and the American Academy of Family Physicians (AAFP) have both issued policy statements regarding the importance of respecting adolescent patients’ requests for confidentiality when providing health care services. The APHA has explained that “[p]arental involvement [requirements] do not

¹⁶ Retirement Dinner Today for 10 On UNCG Staff , News & Record, Apr. 30, 1996, https://www.greensboro.com/retirement-dinner-today-for-on-uncg-staff/article_98f47983-7d69-5323-92d6-f172fe9a5f34.html (noting the National Council on Family Relations has named Rodman as one of the country’s top 30 scholars in the field of family science).

¹⁷ Rodman, *supra* note 3, at 157.

¹⁸ Committee on Adolescence, American Academy of Pediatrics, *supra* note 3 at 1.

¹⁹ AMA, *Code of Medical Ethics Opinion 2.2.3, Mandatory Parental Consent to Abortion*, <https://www.ama-assn.org/delivering-care/ethics/mandatory-parental-consent-abortion>; see also AMA, *Code of Medical Ethics Opinion 2.2.2, Confidential Health Care for Minors*, <https://www.ama-assn.org/delivering-care/ethics/confidential-health-care-minors>.

²⁰ AMA Council on Ethical and Judicial Affairs, *AMA Code of Medical Ethics’ Opinions on Confidential Care for Sexually Active Minors and Physicians’ Exercise of Conscience in Refusal of Services, Opinion 2.015 – Mandatory Parental Consent to Abortion*, <https://journalofethics.ama-assn.org/article/ama-code-medical-ethics-opinions-confidential-care-sexually-active-minors-and-physicians-exercise/2012-02>.

promote family communication as intended, and can elevate pregnant minors' risks by delaying access to care," and create "[o]ther negative consequences," including, among other things, "parentally coerced termination of pregnancy, physical violence between the parents or against the pregnant minor, the pregnant minor being forced to leave the home, damage to the parents' health, the pregnant minor being delayed in informing her parents, negative experiences when informing parents, the potential to aggravate family conflicts, and pregnant minors from dysfunctional and nonsupportive families carrying unwanted pregnancies to term without receiving adequate prenatal care."²¹ Accordingly, the APHA urges that "minors' access to abortion services not be made conditional on parental involvement."²² The AAFP notes in its policy statement that "[c]oncerns about confidentiality may create barriers to open communication between patient and physician and may thus discourage adolescents from seeking necessary medical care and counseling," and recommends that "[p]hysicians [] deliver confidential health services in situations involving sexuality (including [STIs], contraception, and pregnancy), substance use/abuse, and mental health to consenting adolescents."²³

Conclusion

34. In sum, it is my opinion, based on my decades of experience and the relevant literature, that it is presumptuous of Defendants to assume that they know better than any particular young woman herself whether disclosure of her pregnancy and/or abortion decision to her parents or sponsor will result in harm, and that disclosure (with or without a young woman's consent) will necessarily advance her best interests.

²¹ APHA, Policy No. 20115, *Ensuring Minors' Access to Confidential Abortion Services* (Nov. 1 2011), <https://www.apha.org/policies-and-advocacy/public-health-policy-statements/policy-database/2014/07/03/11/14/ensuring-minors-access-to-confidential-abortion-services> (citations omitted).

²² *Id.*

²³ AAFP, *Adolescent Health Care, Confidentiality*, <https://www.aafp.org/about/policies/all/adolescent-confidentiality.html>; see also AAFP, Adolescent Health Care, Sexuality and Contraception, <https://www.aafp.org/about/policies/all/adolescent-sexuality.html>.

35. While, at first blush, one might assume that the above-discussed reasons given by teens for not disclosing their intended abortion to a parent are not relevant in the present context given the geographical distance between parent and child, it is important to recognize that they remain highly salient. Notably, I understand that some young women flee to the United States because they have suffered abuse at the hands of their parents. If these young women are ultimately sent back to their home countries, they may well be at risk of parental abuse or rejection. There is nothing to suggest that a lapse of time will ameliorate these risks. Moreover, if notice is given to a prospective sponsor, who is most likely to be a family member, a young woman may again be at risk of abuse or rejection at the hands of this party.

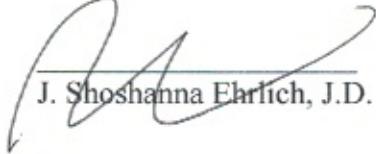
36. I also understand that the parents to whom these forced disclosures are being made may be subject to the same dangers, threats of violence, and/or grinding poverty that compelled their daughter to flee to the United States in the first place. As mentioned above, one of the reasons minors choose not to disclose their pregnancies and abortion decisions to their parents is their concern that doing so will exacerbate existing parental stress. Given unaccompanied minors' knowledge of the often difficult circumstances they left behind in their home countries, it would not be surprising if a minor was justifiably concerned that informing her parents would only exacerbate the tremendous stress that her parents experience on a daily basis and cause them further harm.

37. Plaintiff Jane Poe's case makes absolutely clear that the risks of mandated disclosure are not attenuated by a minor's immigration status. As detailed in Plaintiffs' brief, when Ms. Poe was forced by the Defendants to disclose her intended abortion to her mother and sponsor, she was threatened with physical harm. Although her mother was not immediately placed to do so, if Ms. Poe returned home, she could have made good on this threat. Clearly, the

sponsor was in a position to make good on this threat; accordingly, I understand that he did not end up serving as Ms. Poe's sponsor.

38. For all of the foregoing reasons, it is my expert opinion that Defendants' mandatory disclosure policy is in direct conflict with the needs and interests of unaccompanied young women in the care and custody of the Office of Refugee Resettlement and threatens them with harm. Teens are far better situated than are Defendants to assess the likely outcome of disclosure based on the complex realities of their own lives. A mandatory disclosure policy is impervious to the very real risks that disclosure may bring, thus putting a highly vulnerable population in harm's way, as was made plainly evident by the case of Plaintiff Jane Poe.

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed on 8/5/19, in Brookline, MA.



J. Shoshanna Ehrlich, J.D.

Exhibit A

J. Shoshanna Ehrlich



EDUCATION

Northeastern University School of Law

J.D., May 1982

University of Michigan

B.A., with Distinction, May 1978 in Political Science and History
Honors: Phi Beta Kappa, Class Honors, 1977 and 1978

ACADEMIC POSITIONS

2014 to Present	Professor, Women's, Gender, and Sexuality Studies Department University of Massachusetts Boston
2008 to 2014.	Associate Professor, Women's, Gender, and Sexuality Studies Department University of Massachusetts Boston
2010-2012	Chair, Women's, Gender, and Sexuality Studies Department University of Massachusetts Boston
Spring 2010 Department	Acting Chair, Women's, Gender, and Sexuality Studies University of Massachusetts Boston
2012	Adjunct Professor Northeastern University School of Law
2007	Adjunct Professor Northeastern University School of Law
2001-2008	Associate Professor, Legal Studies Department University of Massachusetts Boston
2000-2001	Visiting Professor, Legal Studies Department University of Massachusetts Boston
1992-2000	Director, Community Advocates Law Office & Adjunct Professor Legal Studies Department University of Massachusetts Boston
1997	Adjunct Professor Northeastern University School of Law

1986-1996	Adjunct Professor, Metropolitan College Boston University
1990-1992	Adjunct Professor, Paralegal Studies Program Fisher College
1991	Adjunct Professor, Paralegal Studies Program Suffolk University
1988	Huberman Teaching Fellow, Brandeis University
1986-1988	Assistant Professor Commonwealth School of Law
1985-1986	Clinical Instructor, Suffolk University School of Law

RESEARCH AND PROFESSIONAL ACTIVITY

Books

Ehrlich, J.S., and Doan, A. (2019) *Abortion Regret: The New Attack on Women's Reproductive Freedom* (Praeger)

Ehrlich, J.S. (forthcoming) *Family Law for Paralegals*. (8th ed.) New York, NY: Aspen Publishers.

Dontrelle, M. and Ehrlich J.S. (2016) *Family Law Fundamentals*. (Law School Edition) New York, N.Y.: Aspen Publishers.

Ehrlich, J.S. (2015) *Fundamentals of Family Law*. New York, N.Y. Aspen Publishers.

Ehrlich, J.S. (2014) *Regulating Desire: From Virtuous Maiden to the Purity Princess*. Albany, NY: SUNY Press.

Ehrlich, J.S. (2006) *Who Decides? The Abortion Rights of Teens*. Westport, CT: Greenwood/Prager.

Journal Articles

Ehrlich, J.S. (2018) "Like a Withered Tree, Stripped of its Foliage:" What the Roe Court Missed and Why it Matters, *Columbia Journal Gender and Law*.

Ehrlich, J.S. (2017) Ministering (In)Justice: The Supreme Court's Misreliance on Abortion Regret in *Carhart v. Gonzales*, *Nevada Law Journal*, 17: 599-617.

Ehrlich, J.S. (2014) Turning Women into Girls: Abortion Regret and the Erosion of Decisional Autonomy, *Women's Rights Law Reporter*, 35:329-356.

Ehrlich, J.S. (2013) From Birth Control to Sex Control: Unruly Young Women and the Origins of the National Abstinence-Only Mandate, *Canadian Bulletin of Medical History* 30: 77-99.

Ehrlich, J.S. (2009) You Can Steal Her Virginity But Not Her Doll: The Nineteenth Century Campaign to Raise the Legal Age of Sexual Consent, *Cardozo Journal of Gender & Law* 15: 229-246.

Ehrlich, J.S. (2006) From the Age of Consent Laws to the “Silver Ring Thing:” The Regulation of Adolescent Female Sexuality, *Health Matrix* 16:151-181.

Ehrlich, J.S. (2003) Choosing Abortion: Teens Who Make the Decision without Parental Involvement, *Gender Issues*, 21:3-39.

Ehrlich, J.S. (2003) Shifting Boundaries: Abortion, Criminal Culpability and the Indeterminate Legal Status of Adolescents, *Wisconsin Women’s Law Journal*, 18:77-116.

Ehrlich, J.S. (2003) Grounded in the Reality of Their Lives: Listening to Teens Who Make the Abortion Decision without Involving Their Parents, *Berkeley Women’s Law Journal*, 18:61-180.

Ehrlich, J.S. (2000) Minors as Medical Decision-Makers: The Perpetual Reasoning of the Court in the Abortion Cases, *Michigan Journal of Gender & Law*, 7:66-106.

Ehrlich, J.S. (2000) Co-Parent Visitation: Acknowledging the Reality of Two Mother Families, *Tulane Journal of Law and Sexuality*, 9:151-162.

Ehrlich, J.S. (2000) The Abortion Decision: Seeking Decisional Equity for Young Women or Why Ear Piercing is a False Analogy, *Massachusetts School of Law Review* 1:26-33.

Ehrlich, J.S. (1998) Journey through the Courts: Minors, Abortion and the Quest for Reproductive Fairness, *Yale Journal of Law and Feminism*, 10:1-27.

Ehrlich, J.S. & Sabino, J. (1991) A Minor’s Right to Abortion: The Unconstitutionality of Parental Participation in Bypass Hearings, *New England Law Review*, 25: 1185-1209.

Peer Reviewed Book Chapters and Essays

Ehrlich, J.S. (2019) Differential Breast Exposure Rules: Encoding the (Heterosexual) Male Gaze into Law. In *Embodying Resistance*, Vol. 2. Chris Bobel & Samantha Kwan (eds) Vanderbilt University Press.

Ehrlich, J.S., Brown, L. & Macquarie, C., (2017) Subverting the Constitution: Anti-Abortion Policies and Politics in the United States and Canada. In *25 Years After Morgentaler*. Tracy Pinner Light & Shannon Stetter (eds), University of British Columbia Press.

Ehrlich, J.S. & Doan, A., (2016) Teaching Morality by Teaching Science: Religiosity and Abortion Regret. In *Reproductive Ethics: New Challenges and Conversations*. Lisa Campo-Engelstein & Paul Campos (eds) Springer Press.

Ehrlich, J. S. (2013) A Wellspring of Contamination: The Transgressive Body of the Prostitute in 19th Century Medical Discourse. In *The Female of the Species: Cultural Constructions of Evil, Women and the Feminine*. Hannah Priest (ed) Inter-Disciplinary Press.

Ehrlich, J.S. (2013) From *Roe* to *Casey*: The Creeping Pro-natalism of the Supreme Court's Abortion Jurisprudence. In *Issues: Understanding Controversy and Society*. ABC-CLIO.

Non-Peer Reviewed Book Chapters and Essays

Ehrlich, J.S. (2016) An Analysis of Differential Breast Exposure Rules Under the Equal Protection Clause. Expert Report Prepared for the American Civil Liberties Union of Missouri.

Ehrlich, J.S. (2013) Protecting a Woman's Right to Abortion. In *Issues: Understanding Controversy and Society*. Santa Barbara, CA: ABC-CLIO, (5 pages).

Ehrlich, J S. (2012) Abortion: A Fragile Right. In *Skirting the Boundaries: The Unfinished Story of Women Judges and Lawyers in Massachusetts*. Boston, MA: Massachusetts Continuing Legal Education, 248-256.

Ehrlich, J.S. (co-authored) (2012) "A Burdened Right: The Massachusetts Abortion Consent Law," in *Skirting the Boundaries: The Unfinished Story of Women Judges and Lawyers in Massachusetts*. Boston, MA: Massachusetts Continuing Legal Education, 257-264.

Ehrlich, J.S. (2009) Abortion: Legal and Public Policy Perspectives. In Richard A. Shweder (ed.), *The Child: An Encyclopedic Companion*, Chicago, IL: University of Chicago Press, 5-8.

Ehrlich, J.S. (2002) Deciding Not to Tell: Minors, Parents and the Right to Abortion. In Judith Bahr (Ed.), *Historical and Multicultural Encyclopedia of Women's Reproductive Rights in the United States*, Westport, CT: Greenwood Press, 3-6.

Ehrlich, J.S. (1999) Adoption and Foster Parenting. In *Reader's Guide to Lesbian and Gay Studies*, Chicago, IL: Fitzroy Dearborn Publishers, 6-7.

Ehrlich, J.S. (1999) Co-Parent Visitation: Acknowledging the Reality of Two Mother Families -- E.N.O v. L.M.M., *Women's Bar Association Law Journal*, 1V: 1-5. (Feature article).

Ehrlich, J.S. (1998) Of Contract Born, But Not Determined: The Uncertain Future of Surrogate Motherhood in Massachusetts after R.R. v. M.H., *Women's Bar Association Law Journal*, II: 1-3.

Published Book Review

Ehrlich, J.S. (2004) *The American Woman, 2003-2004: Daughters of a Revolution, Young Women Today*. Cynthia B. Costello, Vanessa R. Wight, Anne J. Stone (eds), *Journal of Youth*. 81:31-33.

Conference Presentations

“Like a Withered Tree Stripped of its Branches:” What the Roe Court Missed and Why It Matters.” (November, 2017). *International Conference on Interdisciplinary Legal Studies*. Harvard University, Boston, Massachusetts.

“From God to the Supreme Court: The Religious Underpinnings of the Abortion Regret Narrative.” (Member of a “lightening” panel. June, 2017) *Berkshire Conference on the History of Women*. Hempstead, New York

“Freeing the Nipple: Equality Challenges to Differential Breast Exposure Laws.” (April, 2017) *Reproductive Ethics: New Challenges and Conversations*. Albany Medical College. Albany, New York

“Ministering (In)justice: The Supreme Court’s Misreliance on Abortion Regret.” (March, 2017) UMass *Interdisciplinary Legal Studies Colloquium*. Boston, Massachusetts.

“Ministering (In)Justice: The Supreme Court’s Misreliance on Abortion Regret in Gonzales v. Carhart.” (October, 2016). *The Feminist Judgments Conference*. The Center for Constitutional Law - The University of Akron School of Law. Akron, Ohio.

“The Religious Underpinnings of Abortion Regret.” (Co-presenter. June, 2016) *Abortion and Reproductive Justice: The Unfinished Revolution II*. Belfast, Ireland.

“Teaching Morality by Teaching Science:” Religiosity and Abortion Regret.” (April, 2016) *Reproductive Ethics: New Challenges and Conversations*. Albany Medical College. Albany, New York.

“Abortion Regret and the Erosion of Decisional Autonomy.” (August, 2014) *Abortion The Unfinished Revolution*. University of Prince Edward Island, CA.

“Turning Women into Girls: Abortion Regret and the Erosion of Decision Autonomy. (October, 2013) *Beyond Roe: Reproductive Justice in a Changing World*. Rutgers Law School. Camden, New Jersey

“Relegated to the Constitutional Realm of Adolescence.” (June, 2014). *IX World Congress of Constitutional Law*. Oslo, Norway.

“Subverting the Constitution: Abortion Politics and Policies in the United States and Canada.” (Co-presenter. August, 2013) *Canadian Society for the History of Medicine Annual Conference*. Victoria, British Columbia.

“From Birth Control to Self-Control: The Shifting Congressional Response to Young Women’s Sexuality in the United States, 1970-1982.” (April, 2013) *History of Women’s Health Conference*. Philadelphia, Pennsylvania.

“From Birth Control to Sex Control: Unruly Young Women and the Origins of the National Abstinence-Only Mandate.” (June, 2012) *Canadian Society for History of Medicine Annual Conference*. Waterloo, Ontario.

“From Having Babies to Having Sex: The Conservative Attack on Title X.” (June, 2011) *Berkshire Conference on the History of Women*. Amherst, Massachusetts.

“A Wellspring of Contamination: The Transgressive Body of the Prostitute in 19th Century Medical Discourse.” (May, 2011) *Interdisciplinary Network Conference on Evil, Women & the Feminine*. Warsaw Poland.

“The American Social Purity Movement’s Campaign to Raise the Age of Sexual Consent in the United States.” (July, 2009) *West of England and South Wales Women’s History Conference*. Bristol, Wales.

“Consent, Confidentiality and Mature Minors.” (September, 2008) *Sexual Health Matters Conference*. Boston, Massachusetts.

“Abortion: The Constitutional Framework.” (January, 2006) *Symposium on “Women Behind Bars: Issues Confronting Incarcerated Women*. Boston, Massachusetts.

“Understanding the Relationship between Title X Confidentiality Requirements and State Reporting Laws.” (May, 2004) *JSI 25th Annual Reproductive Health Conference*. Boston, Massachusetts.

“Engaging Students in the Learning Process.” (Co-Presenter. May, 2004) *Center for the Improvement of Teaching: Annual Conference on Teaching for Transformation*. Boston, Massachusetts

“Confidentiality and State Reporting Law: Focus on New England.” (2003) *JSI 24th Annual Reproductive Health Conference*. Portsmouth, New Hampshire.

“The Legal Rights of Teen Girls.” (2003) *G.I.R.L.S, Inc. Conference*. Boston, Massachusetts.

“The Legal Rights of Teens in Reproductive Health Settings.” (2002) *JSI 23rd Annual Reproductive Health Conference*. Portsmouth, New Hampshire.

“Grounded in the Reality of Their Lives: Listening To Teens Who Make The Abortion Decision Without Involving Their Parents.” (August, 2002) *Annual Conference of the American Political Association*. Boston, Massachusetts. (Paper selected for the Best Paper Award by the Women and Politics Section.)

“The Impact of Parental Involvement Laws on Teens Seeking Abortion.” (2002) *Annual Conference of the National Network of Abortion Funds*. Hartford, Connecticut.

“Writing Across the Curriculum.” (Co-Presenter. May, 2002) *Center for the Improvement of Teaching: Annual Conference on Teaching for Transformation.* Boston, Massachusetts.

“Young Women and Abortion: Confronting the Reality of Parental Involvement Laws.” (November, 2000) *Annual Conference of the National Women's Studies Association.* Boston, Massachusetts.

“Working with Young Teens: Required Confidentiality vs. Mandated Reporting.” (March, 1998) *Sexuality Education Conference.* Newton, Massachusetts.

“The Legal History of Abortion.” (1996) *University of Massachusetts Reproductive Rights Conference.* Boston, Massachusetts.

“The Abortion Rights of Minors.” (1991) *Brandeis University Abortion Rights Conference.* Waltham, Massachusetts.

Invited Lectures/Talks

(Re)producing the Maternal Ideal: Abortion Laws and the Romancing of Motherhood. (March 2018). *Conceiving Equity: A Reproductive Justice Summit – 6th Annual Roe v. Wade Lecture.* Tulane University. New Orleans, Louisiana.

“Gender and Marriage Equality in the United States.” (December, 2017). *International Conference on Interdisciplinary Gulf Studies Conference.* Qatar University. Doha, Qatar.

“Disrupting the Gendered Order of Creation: Religiosity and Abortion Regret.” (March, 2017) *No Turning Back: The Past, Present, and Future of Reproductive Justice.* Northeastern University. Boston Massachusetts.

“The Emergence of the Woman-Protective Anti-Abortion Narrative.” (May, 2015) *Brigham and Women's Hospital Family Planning Seminar Series.* Boston, Massachusetts.

“Turning to the Courts: Pregnant Teens and the Massachusetts Judicial Bypass Law.” (Guest Lecturer. March, 2014) *University of Massachusetts Boston.* Boston, Massachusetts.

“The Rise of Gender Paternalistic Anti-Abortion Rhetoric.” (April, 2013) *Boston University School of Law.* Boston, Massachusetts.

“Evolution of Marriage Equality in the United States.” (Keynote Address. January, 2012) *High Court of Madras.* Chennai, India.

“Marriage Equality Rights in the United States.” (January, 2012) *NALSAR University of Law.* Hyderabad, India.

“Legal Protections for Victims of Domestic Violence in the United States.” (Keynote Speaker. January, 2012) *International Symposium: Indo-American Perspectives on Women.* Madurai, India.

“Domestic Violence Law in the United States: History, Reform, and Challenges.” (Keynote Address. January, 2012) *Women, Society and Law in the New Millennium: An International Dialogue*. Chennai, India.

“Development of Domestic Violence Policies in the United States.” (January, 2012). *Women and Violence: The American and the Indian Scenario*. Hyderabad, India.

“Abortion Regret.” (March, 2011) *Beyond "Killing Babies: The Impact of the New Anti-Abortion Rhetoric on Women's Rights*. Conference for invited activists and scholars, co-sponsored by the Civil Liberties of Massachusetts, Mass NARAL and the UMB Women’s and Gender Studies Department. Boston, Massachusetts.

“From Pro-Fetus to Pro-Woman: The Shifting Nature of Anti-Abortion Rhetoric.” (2010) *Harvard University School of Law*. Cambridge, Massachusetts.

“A Noxious Site of Contamination or the Victim of Lust? The Nineteenth Century Debate over the Legalization of Prostitution.” (2010) *Science and Society Speaker Series*. University of Massachusetts Boston. Boston, Massachusetts.

“Making the Abortion Decision without Parental Consent: Listening to Young Women.” (Keynote Speaker. December, 2008) *Judicial Bypass Advisory Conference*. Washington, D.C.

“The Abortion Rights of Minors.” (April, 2007) *Harvard University School of Law*. Cambridge, Massachusetts.

“Prostitution: The Legal Construction of Choice.” (Guest Lecturer. July, 2005) *Boston University*. Boston, Massachusetts.

“Women in the Military.” (Guest Lecturer. July, 2003) *Boston University*. Boston, Massachusetts.

“Minors who Make the Abortion Decision without Parental Involvement: Key Findings from the Minors’ Abortion Rights Project.” (2001) *Annual Board of Overseers’ Meeting of the Planned Parenthood League of Massachusetts*. Boston, Massachusetts.

“Redefining the Family: Legal Norms.” (2000) *Colloquium on the Ethics of Adoption: University of Massachusetts Boston*. Boston, Massachusetts.

“To Tell Parents or Not: Minors, Abortion and the Right of Reproductive Privacy.” (November, 2000) *Women’s Research Forum: University of Massachusetts Boston*. Boston, Massachusetts.

Professional Trainings/Workshops

“Transnational Feminisms.” (2012) Taught certificate course for undergraduates at St. Ann’s College for Women. Hyderabad, India.

“Consent and Confidentiality: Adolescents and Reproductive Decision Making.” (2009) Delivered workshop to school professionals and family planning providers. Brockton, Massachusetts.

“Representing Minors in Judicial Bypass Hearings.” (2006) Trained attorneys and health care providers. Salt Lake City, Utah.

“Representing Minors in Judicial Bypass Hearings.” (2005) Trained attorneys and health care providers. Kansas City, Missouri.

“Counseling Adolescents: Confidentiality and Legal Issues.” (2003) Delivered workshop to health care providers for ABCD Health Services/Boston Family Planning and JSI Research & Training Institute. Peabody, Massachusetts.

“Legal Rights of Adolescents in Reproductive Health Settings.” (2002) Delivered workshop to health care providers for ABCD Health Services/Boston Family Planning and JSI Research & Training Institute. Boston, Massachusetts.

“Working with Adolescents and Their Parents in Reproductive Health Settings: Counseling and Legal Issues.” (2001) Presenter at training sponsored by JSI Research & Training Institute. Boston, Massachusetts.

“Legal Aspects of Adolescent Reproductive Health.” (2001) Presenter at the Adolescent Access Project: Train the Trainers Series, sponsored by ABCD/Boston Family Planning. Boston, Massachusetts.

“Counseling Young Women to Resist Sexual Coercion.” (2000). Presenter at training sponsored by JSI Research & Training Institute. Boston, Massachusetts.

“Consent and Confidentiality in the Provision of Health Care to Adolescents.” (2000) Provided staff training at the South End Neighborhood Health Clinic. Boston, Massachusetts.

“The Legal Rights of Teens in Reproductive Health Settings.” (1999) Professional Education Series at the Planned Parenthood League of Massachusetts. Boston, Massachusetts.

Training and Educational Manuals

Ehrlich, J.S. (2010) Protection against Domestic Violence. *The Study Guide for Family Affair*. C-Line Films.

Training Manual for Attorneys Representing Minors in Judicial Bypass Proceedings. (2007) Committee for Public Counsel Service. (Contributing author and editor).

Representing Minors in Judicial Bypass Hearings in North Carolina: A Training Manual. (2002) (Co-authored with Jamie Ann Sabino in collaboration with American Civil Liberties Union Reproductive Freedom Project, with the assistance of the ACLU of North Carolina).

Ehrlich, J.S. *Your Legal Rights: A Handbook for Teen Girls in Massachusetts*. (2002). Boston: University of Massachusetts Publications.

Grants

The Teen Girls Legal Rights Project. (2000) Funding received from the Planned Parenthood League of Massachusetts for the publication of *Your Legal Rights: A Handbook for Teen Girls in Massachusetts*.

Minors' Abortion Rights: Adult Involvement and Access Project. (1997) Grant awarded by the David and Lucille Packard and the Robert Sterling Clark Foundations for an in-depth study of the experience of young women who make the abortion decision without parental involvement.

SERVICE

Service to the Women's, Gender, and Sexualities Studies Department

Commentator on the film “Trapped,” shown as part of the *Women Take the Reel* film Series (March 2018).

Chair of Promotion Committee (present).

Member of the DPC (2008 to present).

Member of the Sexuality Studies Committee (2006-2008 and 2012-present).

Member of REAB/Shared Governance Committee (Spring 2016)

Chair of the Department Personnel Committee (2012-2013 and Fall 2016).

Department Chair (2010-2012).

Co-Chair of the Founder's Award Committee (Spring 2011, 2012, 2014 & 2016).

Acting Chair (Spring Semester, 2010).

Member of two Fourth Year Review and Three Tenure Promotion Committees (2006-2011).

Member of Women's Studies Advisory Board (1999-2008).

Service to the College of Public and Community Service

Member of the Personnel Board (2005-2008).

Member of the Constitutional Review Committee (2006-2007).

Curricular consultant to the Philosophy and Law Program (2006-2007).

Member of the Curriculum Council (1999 – 2005).

Chair of the First Year Initiative Committee (1997- 1998).

Service to the College of Liberal Arts

Member of an Ad Hoc Promotion Committee in the Music Department (2016-2017)

Member of the College Personnel Committee (20015-2016).

Member of an Ad Hoc Tenure Committee in the Communications Department (2015-2016).

Member of an Ad Hoc Tenure Committee in the American Studies Department (2014).

Member of the Hiring Committee for the position of Associate Director for the Consortium on Gender, Security and Human Rights (2013 and 2014).

Member of an Ad Hoc Fourth Year Review Committee in the American Studies Department (2012).

Member of a Committee charged with exploring the possibility of developing a Community Engagement Program of Study (2009-2010).

Participated in the planning of the CLA first year initiative, including assisting with the process of hiring the CLA First Student Advisor (2009-2010).

Member of the Faculty Senate (2008-2009).

Service to the University

Member of the Constitution Committee of the Faculty Council (Spring 2018)

Organized two panel discussions on reproductive justice bringing prominent activists/authors to campus (Fall 2017-Spring 2018).

Member of the Legal Studies Committee (Fall 2016 - present).

Organized a student panel as part of the *Not My Normal: Intensive Teach-In* (Spring 2017)

Gave a talk on recent attacks on abortion access as part of the *Not My Normal: Intensive Teach-In* (Spring 2017).

Member of an Ad Hoc Tenure Committee in the School of Global Inclusion and Social Development (Fall 2016).

Invited speaker at a CIT workshop for senior faculty on work-family balance issues (March, 2016).

Elected Representative to the Faculty Council (2010-2014).

Member of the Law School 3+3 Initiative Committee (2014-2015).

Faculty Leader on a Beacon Voyager Service Learning Trip to Guatemala (Spring Break, 2014).

Member of the University Grievance Committee, including service in 2012 and 2017 as the Chair of a disciplinary panel (2006-present).

Organized a forum on the feminist movement in India by two visiting faculty members from St. Anne's College for Women in Hyderabad, India (2013).

Organized a panel discussion on the marriage rights of same-sex partners featuring the Legal Director of GLAD and the Executive Director of Lambda Legal (2012).

Co-Organized a showing of the film *The Help*, and was one of the faculty discussants (2011).

Invited Speaker on abortion at the Women's Rights Speak Out organized by UMass Students (2011).

Member of the Transfer Student Retention Sub-Committee of the Retention and Graduation Rates Committee (2010-2011).

Invited Panelist to speak about the film *Family Affair* at its UMB debut (2010).

Helped to grade Writing Proficiency Portfolios (2010).

Member of an ad hoc committee that was charged with reviewing the University's sexual harassment policy (2009-2010).

Member of the Healey Grant Review Committee (2006-2007).

Member of the General Education Writing Subcommittee (2006-2007).

Member of the Center for Women in Politics & Public Policy Advisory Board (2001-2006).

Member of the Selection Committee for the JFK Award (2006).

Member of the General Education Steering Committee (1999-2006).

Member of Sexual Harassment Board (1997- 1998).

Service to the Profession/Community

Expert consultant to the Sex Education Bus Project in collaboration with Architexx and the Legal Skills in Social Context program at Northeastern University School of Law (2016-present),

Appointed to the Editorial Board of Signs (2016). Serve on the Special Editions Subcommittee.

Member of the Steering Committee, Judicial Consent for Minors Lawyer Referral Panel. In this capacity, help coordinate statewide panel of attorneys who represent minors seeking court consent for abortions (1983-present).

Member of the 51A Working Group. Work with an ad hoc coalition of reproductive health, civil liberties, and gay rights activists and professionals to protect the confidentiality rights of sexually active minors under state law (1999-present).

Member of an ad hoc advisory group to the Civil Liberties Union of Massachusetts on reproductive law and policy (2012 to present).

Peer Review of Journal Articles: *Global Public Health* (2017); *Signs* (2016 & 2018); *Laws* (2016); *Science and Collective Health Journal* (2015); *Social Science and Medicine* (2015); *Research Institute of Asian Women* (2013 & 2012); *Journal of Women, Politics & Policy* (2012).

Peer reviewed a book manuscript on sex crimes for SUNY Press (2015),

Peer reviewed a book manuscript on adolescent sexuality for the University of Illinois Press (2014).

Peer reviewed a book manuscript on abortion for McGill-Queens University Press (2013).

Created a Family Law Module for the on-line Law Simulation Series being developed by Wolters Kluwer's Law & Business to provide students with a virtual office experience (2013).

Peer reviewed a book manuscript on teen sexuality for the University of Illinois Press (2013).

Peer reviewed a book proposal on teen sexuality for the University of Illinois Press (2012).

Peer reviewed a chapter for an edited book on abortion in a global perspective (2012).

Served as a legal advisor to first year students at Northeastern University School of Law: who were researching the rights of adolescents in reproductive health settings for the Mass Alliance on Teen Pregnancy (2011-2012).

Provided expert testimony to the Massachusetts state legislature on a bill regarding the abortion rights of teens (2012).

Provided trainings on judicial bypass laws and consulted on matters related to the abortion rights of teens for the American Civil Liberties Union - Reproductive Freedom Project (2000-2010).

Served as a judge for a regional moot court competition at Northeastern University School of Law (2010).

Reviewed a grant application for a reproductive rights organization that was applying for funds to train midwives in Uganda to assist women injured by illegal abortions (2010).

Trained volunteers on the legal rights of minors seeking court consent for an abortion for the Eastern Massachusetts Abortion Fund (2008-2010).

Served as a moot court judge at Northeastern University School of Law. (2005-2008).

Volunteered with MassEquality in the marital equality campaign (2003-2006).

Adolescent Access Project, JSI Research & Training Institute: Consultant on legal rights of teens (2002-2005).

Adolescent Access Project – ABCD/Boston Family Planning: Consultant on legal rights of teens (2001-2003).

Provided legal research assistance for Gay and Lesbian Defenders (GLAD) in the landmark marital rights case of *Goodridge v. Department of Public Health* (2002).

G.I.R.L.S T.V: Guest on local cable television show aimed at educating and empowering young women (2002).

G.I.R.L.S. Project Roundtable: Featured speaker on the legal rights of teen girls (2001).

GLAD: Presented legislative testimony in opposition to the proposed state “mini-DOMA” law (1999-2001).

Center for Reproductive Law and Policy: Invited participant in a daylong roundtable discussion among national experts on minors' abortion issues (1999).

Founding member of the Town of Brookline’s Committee for Domestic Partnership Benefits (1998).

Appointed member of the Town of Brookline’s Moderator's Committee for Domestic Partnership Benefits (1997-1998).

TEACHING AND ADVISING (CLA)

Courses

Global Bodies: Sex, Reproduction and Family in Transnational Perspective (WGS 286 – created course)

Introduction to Women, Gender, and Sexualities in the United States (WGS 100)

Reproductive Rights and Wrongs (WGS 230 – created course)

The Legal Rights of Women (WGS 290 – created course)

Family Law (WGS 291 – created course)

Family Law Practice (WGS 292 – created course)

Recognition

Innovative Face-to-Face Teaching Award. University Conference on Teaching, Learning and Technology (2016).

Invited to facilitate the Spring 2017 CIT Seminar for Post-Tenure Faculty.

Mentoring and Advising Activities

Fall 2017- Present: Chair of Jowal-Lisa Walden's Women's and Gender Studies senior honors committee.

Fall 2017-Present: Member of Ashley Torres' senior honors committee.

Spring 2017: Supervised research assistants Theresa Kelleher-Palmer and Destina Agar (Topic: "pro-life" feminism. Paper accepted for presentation at the Massachusetts Statewide Undergraduate Research Conference – April 2017).

Spring 2016 to present: Supervising research assistant Hui Chen (Topic: The Supreme Court's misuse of religious amicus curiae brief. Paper accepted for presentation at the Massachusetts Statewide Undergraduate Research Conference – April 2017).

Fall 2016: Supervised teaching assistant Jowal-Lisa Walden.

Spring 2016 and Fall 2015: Supervised teaching assistant Anny Rodriguez.

Fall 2015-Spring 2016: Chair of Anny Rodriguez' Women's and Gender Studies senior honors committee.

Fall 2015: Supervised teaching assistant Michelle Chouinard.

Fall 2015: Principle advisor for Mercedes Jackman's honors thesis work in Women's and Gender Studies

Fall 2014: Supervised teaching assistants Jessica Manna and Anny Rodriguez.

Fall 2014: Supervised research assistants Hella Dijsselbloem and Gabby Fiore (Topic: the "pro-woman/pro-life" antiabortion movement).

Fall 2013: Supervised teaching assistant Cheyanne Gracia.

Summer 2013: Supervised research assistant Cheyanne Gracia (Topic: gender norms and abolitionism).

Summer 2013: Supervised research assistant Jess Guerrier (Topic: legal regulation of adolescent sexuality).

Summer 2012: Supervised research assistant Stephanie Boniest (Topic: transsexual marriage cases).

Fall 2011: Supervised research assistant Sara Dragan (Topic: purity balls and virginity pledges).

Fall 2011: Member of Sarah Adriana's Women's and Gender Studies honors thesis committee.

Fall 2011-Spring 2011: Member of Kimberly Podhale's dissertation committee.

Spring 2009-Fall 2009: Chair of Phyllis Ninawa's Women's and Gender Studies senior honors committee.

Exhibit 3

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

J.D., on behalf of herself and others similarly)
situated, *et al.*)
Plaintiffs,)
v.) Civil No. 17-cv-02122-TSC
ALEX M. AZAR II, *et al.*,)
Defendants.)

DECLARATION OF REBECCA GARCIA RANGEL

I, Rebecca Garcia Rangel, M.S.W., pursuant to 28 U.S.C. §1746, declare under penalty of perjury that the following is true and correct:

1. I am currently employed as a Social Worker at Public Counsel's Immigrant Rights Project. The contents of this Declaration are based upon my own personal knowledge and information supplied to me by colleagues at Public Counsel, whom I believe to be reliable. The information is of a type that is generated in the ordinary course of our business, and that I would customarily rely upon in conducting Public Counsel's work. If called upon to do so, I could and would testify competently to the matters stated herein.

2. Public Counsel's Immigrant Rights Project (IRP) provides representation through our in-house attorneys, social workers, and advocates, and through hundreds of pro bono attorneys whom we recruit and train. IRP runs several programs to protect the rights of immigrants facing deportation, including people fleeing Central America. Since 2014, we have consistently represented approximately 200 unaccompanied children annually, and we currently represent approximately 211. Nearly all of these children are from El Salvador, Guatemala, and

Honduras, and nearly all fear persecution if returned to their home countries. We also currently provide pro bono legal representation to families in removal proceedings (the vast majority of whom are from Central America); conduct know-your-rights trainings and offer individualized legal assistance to detained individuals; and represent approximately two hundred crime victims seeking U visas, T visas, relief under the Violence Against Women Act (VAWA), and related adjustments of status.

3. I arrived at IRP in November 2018, with six years of experience working with clients with no lawful status who have been trafficked, experienced severe abuse, have criminal or delinquency history, or have been exposed to community violence whether in their home country, while they were in-transit, and/or once in the United States.

4. In my role as a Social Worker, I am tasked with physically and emotionally accompanying clients through the complex immigration system. I assess clients' physical and mental health needs and collaborate with them to secure services (medical, mental health, educational, etc.) to meet those needs, provide immediate intervention when crises arise, and build trusting relationships that enable clients to establish or regain coping mechanisms so that they can participate effectively in their legal cases and in their lives. These needs range from food resources and school enrollment to medical services, including safe and affordable access to legal abortions.

5. As recently as last June, I worked with an indigenous minor from Guatemala who needed to obtain parental consent in order to access an abortion. In speaking with the minor about her decision, it became clear to me that being forced to disclose and get consent from her mother was generating negative emotional reactions and becoming an obstacle to the abortion that she would otherwise choose. The minor voiced her concern about feeling obligated to have

the baby if she could not get consent from her mother. She feared what their close indigenous Guatemalan community would think about her if they found out about the abortion, yet also believed that, if she carried the pregnancy to term, she would not receive emotional or financial support and would have to support a baby alone.

6. In my own and colleagues' experiences, forced disclosure of pregnancy or the desire for an abortion produces a tangible fear among minors from Central American countries. Engrained gender inequities, increased violence against women and girls, and high religiosity has created a culture of conservatism and taboo around abortion in the region.

7. El Salvador, Honduras, and Nicaragua prohibit abortion all together with no legal exceptions, while Guatemala only permits it to save a woman's life (Guttmacher Institute, 2018). Many of our clients – including unaccompanied young women and girls – come from countries where abortion has always been illegal. This national context combined with the dangerous mechanisms used to intimidate and extort women and girls in transit to the United States, results in the arrival at our border of girls who have been raped or sexually assaulted in their home country or in transit to the United States and who may be afraid to reveal these assaults to their family.

8. Many of these minors find out about their pregnancies after being examined at the detention center where they await reunification. Forcing minors to disclose their pregnancy and desire for an abortion to their parents or potential sponsor endangers their release and subsequent stability.

9. Forced disclosure over a phone call can be a traumatic experience, especially if the cause of said pregnancy is rape or sexual assault. It may require the painful disclosure of rape or sexual assault before the minors are emotionally ready and without consideration of the

possible consequences. Many of these minors have suffered abandonment and neglect by the parents. In cultural contexts in which abortion is viewed with disapproval, its disclosure can further fracture family relationships and risk leaving girls with limited or no familial or community support.

10. Many young women choose not to disclose to their parents because of a fear of being thrown out of their home; in the detention context, because of a fear that they will not be welcomed into their sponsor's home. It can have the potential consequence of a withdrawal of sponsorship due to religion, cultural beliefs, or financial expectations.

11. The expectation that the parents might support the minor in making a more informed decision is flawed where many of these parental relationships will begin to form after the minor is released from government custody and reunified with a parent with whom they might not have lived for many years, or even since infancy.

12. The majority of these minors will be released from detention with no legal status and being too young to work, exacerbating the risk for social and economic marginalization and abuse. They will be completely dependent on their caregiver. Where children are forced to disclose pregnancy or abortion to disapproving parents or sponsors, this dynamic puts minors at risk of suffering financial blackmail and emotional or physical abuse once they are reunified.

13. Forced disclosure can throw a wrench in the reunification process, heighten trauma associated with disclosing deeply personal information to someone the minor has never met or has not seen in years, isolate or ostracize the minor in her home or community, and expose the minor to emotional or physical abuse, and financial blackmail. Forced disclosure will also strain family relationships in the United States and abroad.

14. As in the case presented above, many of the minors considering abortion already

have a trusted adult to whom they confide their decision – at times this person is an older sibling, their attorney, or a social worker. Forced disclosure to a parent or potential sponsor irrespective of the minors' fears potentially exposes minors to unnecessary emotional, psychological, and physical harms. Minors who trust their parents or an adult figure will seek their advice; however, the decision of whom to confide in should not be made for them.

Pursuant to 28 U.S.C. §1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated: August 05, 2019

Rebecca Garcia Rangel
Rebecca Garcia Rangel, M.S.W.

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

J.D., on behalf of herself and others similarly
situated, *et al.*,)
Plaintiffs,)
v.) No. 17-cv-02122-TSC
ALEX M. AZAR II, *et al.*,)
Defendants.)

[PROPOSED] ORDER

Upon consideration of the moving papers submitted by Plaintiffs in support of their motion for a preliminary injunction, any opposition, reply, and further pleadings and argument submitted in support thereof, or in opposition thereto, and the entire record in this case;

It appearing to the Court that Plaintiffs are likely to succeed on the merits of their action, that members of the Plaintiff class will suffer the irreparable injury of violation of their Fifth Amendment rights if Defendants are not immediately enjoined from forcing Plaintiff class members to disclose their pregnancies and/or abortion decisions against their will, or disclosing that information themselves, that Defendants will not be harmed if such an order is issued, and that the public interest favors the entry of such an order, it is, therefore,

ORDERED that Plaintiffs' motion for a preliminary injunction is hereby GRANTED; and the Defendants (along with their respective successors in office, officers, agents, servants, employees, attorneys and anyone acting in concert with them) are, until further order of the Court, hereby enjoined from forcing any class member to reveal the fact of her pregnancy and/or her abortion decisions to anyone, and from revealing those facts and/or decisions to anyone themselves, either before or after an abortion, unless a class member provides non-coerced

consent to such disclosure or needs emergency medical care and is incapacitated such that she is unable to inform a medical care provider herself.

Date: August _____, 2019

TANYA S. CHUTKAN
United States District Judge